STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

THE STATE OF MINNESOTA,
BY HUBERT H. HUMPHREY, III,
ITS ATTORNEY GENERAL,

AND

BLUE CROSS AND BLUE SHIELD OF
MINNESOTA,

PLAINTIFFS,

VS. FILE NO. C1-94-8565

PHILIP MORRIS, INCORPORATED, R.J.
REYNOLDS TOBACCO COMPANY, BROWN &
WILLIAMSON TOBACCO CORPORATION,
B.A.T. INDUSTRIES, P.L.C., LORILLARD
TOBACCO COMPANY, THE AMERICAN
TOBACCO COMPANY, LIGGETT GROUP, INC.,
THE COUNCIL FOR TOBACCO RESEARCH-U.S.A.,
INC., AND THE TOBACCO INSTITUTE, INC.,

DEFENDANTS.

DEPOSITION OF
PAUL MUCH
July 18, 1997
8:30 a.m.

REPORTED BY
LORI A. CASE, RPR
620 PLYMOUTH BUILDING
MINNEAPOLIS, MINNESOTA 55402

DEPOSITION OF PAUL MUCH, taken at the law

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office of Robins, Kaplan, Miller & Ciresi, 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota, commencing at approximately 8:30 a.m. on July 18, 1997, before Lori A. Case, Registered Professional Reporter and Notary Public.

* * * *

A P P E A R A N C E S

On Behalf of the Plaintiffs:

Robins, Kaplan, Miller & Ciresi
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402

BY: William H. Manning
Vincent J. Moccio

On Behalf of Defendant Lorillard Tobacco Company:

Doherty, Rumble & Butler
3500 Fifth Street Towers
150 South Fifth Street
Minneapolis, Minnesota 55402

BY: Carolyn J. Anderson

A P P E A R A N C E S (Cont.)

On Behalf of Defendant Philip Morris, Incorporated:

Arnold & Porter

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Suite 4000
1700 Lincoln Street
Denver, Colorado 80203

BY: Tim Atkeson

Dorsey & Whitney
Pillsbury Center South
220 South Sixth Street
Minneapolis, Minnesota 55402

BY: Edward B. Magarian

I N D E X

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E X H I B I T I N D E X

DEFENDANTS' EXHIBITS: (Not Attached)		FIRST PAGE REFERENCE
2000	Curriculum vitae of Paul Much (No Bates)	7
2001	Document entitled "Paul J. Much, Testimony Provided in Previous Years" (No Bates)	9
2002	Document entitled "Paul Much Discovery Documents" (No Bates)	29
2003	Document entitled "Additional Paul Much Discovery Documents" (No Bates)	29
2004	(No description provided - no Bates)	31
2005	(No description provided - no Bates)	31
2006	(No description provided - no Bates)	31
2007	(No description provided - no Bates)	31
2008	List of publicly available financial reports and documents relied on by Paul Much (No Bates)	33
2009	List of discovery pleadings and miscellaneous non-Bates stamped documents relied on by Paul Much (No Bates)	33
2010	Expert Analysis of Profitability by Paul J. Much, June 1997 (No Bates)	38
2011	Exhibits Volume to Expert Analysis of Profitability by Paul J. Much (No Bates)	38

E X H I B I T I N D E X (Cont.)

DEFENDANTS' EXHIBITS: (Not Attached)		FIRST PAGE REFERENCE
2012	Expert Analysis of Advertising, R&D and Youth Prevention Expense by Paul J. Much, June 1997 (No Bates)	92
2013	Amended Expert Analysis of Advertising, R&D and Youth Prevention Expense by Paul J. Much, July 1997, pagination dated 5-30-97 (No Bates)	92

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2014 Amended Expert Analysis of Advertising, R&D and Youth Prevention Expense by Paul J. Much, July 1997, pagination dated 5-29-97 (No Bates) 106

PAUL MUCH,

after having been first duly sworn, was examined and testified as follows: 08:41:38

EXAMINATION

BY MR. ATKESON:

Q. Good morning. My name is Tim Atkeson. I am here from the law firm of Arnold & Porter and, together with Mr. Magarian, we are representing the defendants in this action. 08:41:42 08:41:44 08:41:46 08:41:48

And it's my understanding that you have been designated as an expert for the plaintiffs in 08:41:50 08:41:54

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the State of Minnesota/Blue Cross case. Is that correct? 08:41:56 08:41:58

A. Yes. 08:41:58

Q. Could you state your full name for the record and your work address? 08:42:02 08:42:04

A. Sure. My name is Paul J. Much. My work address is 20 South Clark Street, 21st Floor, Chicago, Illinois 60603-1881. 08:42:10 08:42:16 08:42:20

Q. I know you have had your deposition taken on other occasions, but I'll just go through the ground rules just so we are all clear today. 08:42:24 08:42:26 08:42:28

I will be asking the questions. You have the opportunity to ask me to clarify anything; or if there are any questions you have, please ask them. 08:42:32 08:42:34 08:42:38

You need to give your responses verbally, because nods and the like aren't going to show up on the record here. 08:42:40 08:42:44 08:42:46

You are free to ask for a break at any point. Just let us know if you would like to take one. 08:42:48 08:42:52 08:42:52

And, also, if you need to talk to your counsel, just signal that and we will deal with that when that comes up. 08:42:56 08:42:58 08:43:00

Is that fair? 08:43:00

A. I understand. 08:43:02

MR. ATKESON: Let me just ask a procedural question off the record. 08:43:10 08:43:10

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(Discussion off the record.)
(Defendants' Exhibit 2000
marked for identification.) 08:43:48

BY MR. ATKESON: 08:43:48

Q. Let me hand you what's been marked as 08:43:52
Defendants' 2000. Do you recognize this? 08:43:54

A. Yes. 08:43:54

Q. What is it? 08:43:56

A. This is my professional qualifications, my 08:44:00
curriculum vitae. 08:44:02

Q. And is this the most current version? 08:44:04

A. Yes. 08:44:06

Q. It indicates in your experience the commonality 08:44:14
between the three positions you have held. There 08:44:16
seems to be a specialization in valuation; is that 08:44:18
correct? 08:44:20

A. Valuation and financial analysis. 08:44:20

Q. Have you been qualified as an expert in valuation? 08:44:26

A. Yes. 08:44:28

Q. What other topics have you been qualified as an 08:44:30
expert in? 08:44:32

A. I would say a variety of valuation related topics, 08:44:36
including dividend policy, allocation of value, 08:44:52
fairness, solvency, and financial analysis related 08:44:58
thereto. Those are the ones that quickly come to 08:45:02
mind; there may be others. 08:45:04

Q. Have you ever been qualified as an expert in 08:45:04
marketing? 08:45:06

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17 A. No. 08:45:10
18 Q. Psychology? 08:45:12
19 A. No. 08:45:12
20 Q. Antitrust? 08:45:14
21 A. No. 08:45:14
22 Q. Addiction? 08:45:24
23 A. No. 08:45:24
24 Q. What causes people to smoke? 08:45:28
25 A. No. 08:45:30

1 Q. You've also given us -- 08:45:36
2 MR. ATKESON: Go ahead and mark that as 08:45:38
3 2001. 08:45:40
4 (Defendants' Exhibit 2001
5 marked for identification.) 08:45:58
6 BY MR. ATKESON:
7 Q. Let me hand you what's been marked as 2001. This, 08:46:06
8 as I understand it, is a list of your previous court 08:46:06
9 testimony and deposition testimony. And it may not 08:46:10
10 be complete, but that's what this is? 08:46:12
11 A. That is correct. 08:46:12
12 Q. In all of these cases were you qualified as an 08:46:14
13 expert in valuation or some valuation related topic? 08:46:16
14 A. Yes. 08:46:42
15 Q. Is there any particular course of study one needs to 08:46:46
16 take to become an expert in valuation? 08:46:50
17 A. You mean is there a single course that you need to 08:46:56
18 take or just a body of -- 08:46:58

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19 Q. Is there some degree you have to have or test you have to take? 08:47:00 08:47:02
21 A. I understand your question now. No. 08:47:06
22 Q. What is it that you have done that you believe makes you an expert in valuation? 08:47:10 08:47:12
24 A. I have two degrees in finance, as well as strong concentrations in accounting in both; 25 years of 08:47:22 08:47:26

1 experience in financial analysis working with companies on a variety of financial matters, including valuation. 08:47:30 08:47:36 08:47:44
4 Q. Can you give us a shorthand definition of "valuation"? Is it the same as appraisal? 08:47:48 08:47:50
6 A. In part. It may go beyond appraisal. 08:47:56
7 Q. What else would you include? 08:47:58
8 A. In the broad category of valuation? 08:48:02
9 Q. Yes. 08:48:02
10 A. Valuation involves financial analysis as a basis to determine the fair market value of an asset; it could be the fair value of an asset, it could be an allocation of value. That would be one view. 08:48:20 08:48:30 08:48:32 08:48:42
14 Q. Is that your view? 08:48:44
15 A. In general. 08:48:46
16 Q. In terms of valuation assignments or exercises that you have done, have you ever had to use your skills in valuation with regard to the tobacco industry other than the assignment here? 08:48:56 08:49:00 08:49:02 08:49:06
20 A. Let's clarify "the tobacco industry" in answering that question. If you include owners of companies 08:49:14 08:49:20

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in the tobacco industry, the answer is yes. 08:49:24
Q. And when you say "owners," who are you referring to 08:49:26
or what are you referring to? 08:49:28
A. Years ago, in the mid '80s, I did some work with 08:49:30

American Brands. 08:49:34
Q. And what was the nature of that work? 08:49:36
A. It was a long time ago. I have a very vague 08:49:38
recollection of it. As I recall, it was related to 08:49:42
solvency, financial analysis of various parts of 08:49:48
that company. 08:49:50
Q. Were you at Duff & Phelps or Houlihan Lokey at that 08:49:56
point? 08:49:56
A. Houlihan Lokey. 08:49:58
Q. Do you recall who you worked with at American 08:50:02
Brands? 08:50:02
A. Actually, I don't, because it was a long time ago. 08:50:06
Q. And do you recall in what context the assignment 08:50:08
came up? 08:50:10
A. Again my recollection is vague, but I generally 08:50:14
recall that there was a transaction under 08:50:18
consideration and we were being asked to analyze it 08:50:24
on behalf of the management of American Brands -- at 08:50:30
the request of the management of American Brands. 08:50:32
Q. And "we" being Houlihan Lokey? 08:50:34
A. Yes, and me personally as well. 08:50:36
Q. Other than the assignment that you have in this 08:50:56
case, have you had an opportunity to use your skills 08:50:58

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in valuation as it relates to the pharmaceutical industry? 08:51:02 08:51:02

A. I would have to think about that for a while and look back through my assignments. 08:51:14 08:51:18
Q. Do you recall any? 08:51:18
A. Off the top of my head, no. But, again, I would have to think back through that. 08:51:34 08:51:36
Q. How about the alcoholic beverages industry? 08:51:38
A. Again, that goes back to American Brands. 08:51:42
Q. Anything else? 08:51:44
A. No. That's the one that quickly comes to mind. 08:51:48
Q. And that involved an alcoholic beverage issue, or just because it was American Brands and they do both tobacco -- 08:51:50 08:51:52 08:51:54
A. My work was for American Brands. And it was looking at the various parts of American Brands at that time, which would include alcohol and tobacco. 08:51:58 08:52:00 08:52:04
Q. How about branded consumer products? 08:52:08
A. Yes. 08:52:12
Q. What instances do you recall in which you have had -- 08:52:16 08:52:16
A. I have done work from time to time over the years on various valuation questions for some privately-held consumer products companies. 08:52:20 08:52:24 08:52:26
Q. Any publicly-held? 08:52:30
A. Possibly. I would have to go back and think back through the last 25 years. It may be possible, 08:52:34 08:52:38

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but -- 08:52:40
Q. But none come to mind now? 08:52:42
A. Correct. 08:52:42
Q. I'm sorry. Did I ask branded food or branded 08:52:50
consumer products? 08:52:52
A. I think -- 08:52:54
MR. MANNING: Branded consumer products. 08:52:56
BY MR. ATKESON:
Q. Then in terms of branded food, have you had to use 08:52:58
your skills in valuation with regard to those 08:53:02
products? 08:53:02
A. That would be the same answer. There was a couple I 08:53:06
remember doing some work with, privately-held 08:53:08
companies, on that. 08:53:08
Q. Let me ask you: On the last page of Exhibit 2000, 08:53:32
the list of selected assignments -- 08:53:36
A. Yes. 08:53:36
Q. -- are these all while you were at Houlihan Lokey? 08:53:40
A. No. 08:53:40
Q. Which ones weren't? 08:53:44
A. The ones that were not while I was at Houlihan Lokey 08:53:48
would include Arthur Andersen Company; Artic 08:53:54
Enterprises; part of the Chicago Bears, I did part 08:54:04
of that -- one assignment while I was with 08:54:06
Houlihan & Lokey and the other while I was with 08:54:10

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Duff & Phelps; Chicago Bulls; Heizer; McCarthy v. U.S., United States Department of Justice; United States Department of Labor, Donovan v. Cunningham; and Zidell. 08:54:32 08:54:36 08:54:42 08:54:48

Q. Now, you state in this exhibit that you are a nationally-recognized authority on the economics of professional sports. 08:55:00 08:55:02 08:55:04

A. Yes. 08:55:04

Q. What aspects of the economics of professional sports do you believe you are an authority on? 08:55:06 08:55:08

A. The valuation of teams and stadium economics, as well as the general economic structure of the four major professional leagues. 08:55:16 08:55:20 08:55:22

Q. And how have you developed that expertise? 08:55:24

A. Over the years -- over the past 17 years through a variety of assignments, through research and analysis. I have gathered a lot of information on professional sports and as a result I have a substantial understanding of the economics of professional sports. 08:55:34 08:55:42 08:55:50 08:55:52 08:55:54 08:55:54

Q. Now, you have written a book on that subject, at least on the National Football League? 08:56:00 08:56:04

A. Are you referring to "The Evolving Economics of the National Football League and Franchise Value"? 08:56:08 08:56:10

Q. Yes. 08:56:10

A. That's actually a book chapter. 08:56:14

Q. Is that in a textbook? 08:56:16

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A. Yes. 08:56:16
Q. What is the textbook about? 08:56:18
A. The textbook is titled "Financial Valuation: Businesses and Business Interests." 08:56:22 08:56:24
Q. And is there anything specific about valuing a sports team that makes it different than valuing some other business entity? 08:56:28 08:56:30 08:56:34
A. The same principles would apply. You are just dealing with a different economic structure. 08:56:36 08:56:38
Q. But would the same be true in terms of valuing different industries that are in the consumer product area? 08:56:44 08:56:50 08:56:50
A. I'm sorry. Would you repeat that? 08:56:54
Q. Would you be using the same principles of valuation regardless of whether or not you were looking at Coca-Cola versus looking at Palmolive? 08:56:56 08:56:58 08:57:04
A. They may be similar in some respects and different in others. For example, most professional sports teams are private, they are not publicly traded; whereas Coca-Cola and Colgate-Palmolive are public, they actually have their stock prices quoted in the Wall Street Journal based upon transactions every day. So from that standpoint it may depend what the purpose is. 08:57:08 08:57:12 08:57:14 08:57:18 08:57:22 08:57:24 08:57:28 08:57:28

But if I am being asked to value a sports team versus Colgate or Coca-Cola, I would employ the same general principles and I would still be doing a 08:57:32 08:57:36 08:57:40

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financial analysis, but there may be nuances that are different in that analysis. 08:57:44 08:57:48

Q. Is there a checklist of things you have to go through when you do a valuation to see whether or not they are important to the task? 08:57:50 08:57:54 08:57:54

A. That may change by industry. 08:57:58

Q. Have you created such a checklist? 08:58:00

A. No. 08:58:00

Q. Now, other than as an expert in valuation or some valuation related area, have you ever been qualified as an expert in any other subject matter? 08:58:22 08:58:24 08:58:26

A. I would say they are all -- "valuation related" covers a broad area; all areas of financial analysis, financial matters. So I would say in the financial area it's quite broad. Beyond the financial area, no, sir. 08:58:32 08:58:36 08:58:44 08:58:46 08:58:48

Q. Have you ever worked with either of the plaintiffs in this case, being the State of Minnesota and/or Blue Cross Blue Shield? 08:58:54 08:58:56 08:58:58

A. No. 08:59:00

Q. Have you ever worked with any of the law firms representing the plaintiffs in this case? 08:59:02 08:59:04

A. The only law firm I am aware of that represents the plaintiffs here is the Robins Kaplan firm. Are there any other law firms? 08:59:08 08:59:12 08:59:14

Q. Let's start with that for the moment. Have you worked with them before? 08:59:14 08:59:16

A. Yes. 08:59:16

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Q. In what instances? 08:59:18
A. Back in the early '80s we did some work for them in connection with an analysis of Union Carbide in the Bhopal situation. 08:59:22 08:59:26 08:59:28
Q. And "we" would have been Houlihan Lokey? 08:59:34
A. Houlihan Lokey and me. 08:59:36
Q. Who did you work with in their firm at that time? 08:59:42
A. Michael Ciresi. 08:59:50
Q. When were you first contacted about this case? 08:59:52
A. The tobacco case? 08:59:54
Q. Yes. 08:59:56
A. I believe it was in very late December of last year. 09:00:00
Q. Do you recall who contacted you? 09:00:02
A. Yes. 09:00:04
Q. Who was that? 09:00:04
A. Michael Ciresi left me a voice mail in Chicago. 09:00:10
Q. What did he say on it? 09:00:12
MR. MANNING: Objection. We are not going into anything that was said by counsel. You have the contact, you have the time. It's work product. 09:00:16 09:00:18 09:00:24

BY MR. ATKESON:
Q. Did he ask you to do anything at that time? 09:00:26
MR. MANNING: We are not going into any conversations. And you understand that, Counsel. I have let you establish the contact. You understand -- let's move on and not waste time. 09:00:28 09:00:32 09:00:34 09:00:36
MR. ATKESON: Let's not waste time by 09:00:38

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making objections that are incorrect. We are allowed to find out what information the expert was given, whether it comes from a lawyer or a document or anything else. So whatever the lawyer told him is relevant here. 09:00:42 09:00:44 09:00:46 09:00:48 09:00:50

MR. MANNING: No. That's a different question than what you asked. 09:00:50 09:00:52

MR. ATKESON: Are you going to instruct him not to answer? 09:00:56 09:00:56

MR. MANNING: You ask the questions. 09:00:58

MR. ATKESON: I did. 09:01:00

MR. MANNING: Then I will need the question repeated as to what's in front of him. 09:01:00 09:01:04

BY MR. ATKESON:

Q. What message did he leave you on the voice mail? 09:01:06

A. The message he left was that he was interested in 09:01:10

possibly retaining me and my firm in connection with the Minnesota tobacco litigation and was I interested. 09:01:14 09:01:18 09:01:20

Q. And what was the next contact you had with him or the Robins firm? 09:01:22 09:01:22

A. Probably a few days later I left him a voice mail saying that I was out of the office, I had been out for some time, and that I received his message and I would get back to him after the first of the year. 09:01:30 09:01:36 09:01:42 09:01:46

Q. What was the next contact that you recall after that? 09:01:52 09:01:52

A. I believe it was shortly after the first of the year 09:02:02

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when I called him back. 09:02:06
Q. Do you recall the nature of that conversation? 09:02:08
A. It was basically administrative. I asked who the 09:02:14
parties were to the litigation and told him I would 09:02:18
get back to him after I checked around the firm. 09:02:24
Q. Did you have an understanding at that time what you 09:02:26
might be asked to do? 09:02:28
A. He had told me in that conversation that he would 09:02:34
need some consulting assistance on financial matters 09:02:38
in connection with the litigation. 09:02:38
Q. Did you have any more specific understanding than 09:02:44
that? 09:02:44
A. No. 09:02:44

Q. What is the next contact that you recall? 09:02:54
A. I believe I called him back -- this would have been 09:02:56
in early January -- telling him that we would be 09:03:02
available to be retained and that I would send him a 09:03:06
draft of an engagement letter. 09:03:08
Q. And did you do that? 09:03:10
A. Yes. 09:03:10
Q. And were you engaged? 09:03:12
A. Yes. 09:03:12
Q. How much are you being compensated; what's your 09:03:20
rate? 09:03:20
A. My firm is being compensated $450 an hour for my 09:03:26
time. 09:03:26
Q. What was the next contact after you sent the 09:03:34

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engagement letter that you recall? 09:03:36
A. The next contact was received back via the 09:03:44
engagement letter signed. Then discussing the 09:03:52
substance of the analysis and requesting 09:03:58
information. 09:03:58
Q. Now, what do you remember about a discussion of the 09:04:04
substance of the analysis? 09:04:06
MR. MANNING: Now you have gone way beyond 09:04:08
your bounds, Counsel; you know that. That's work 09:04:10
product information. Conversations between him and 09:04:12
counsel regarding the substance of the analysis are 09:04:16

not -- as you well know, are not open to discovery 09:04:20
and it's protected, so... 09:04:22
MR. ATKESON: Counsel, I disagree on 09:04:24
that. We are entitled to find out what he was asked 09:04:26
to analyze. 09:04:26
MR. MANNING: I quite disagree. That's a 09:04:30
different question than what you asked, so... 09:04:32
MR. ATKESON: Are you going to instruct 09:04:34
him not to answer? 09:04:34
MR. MANNING: The question that was in 09:04:36
front of him he is not answering. What you just 09:04:38
talked about in your clarification is a different 09:04:40
question. So it depends on what question you ask. 09:04:44
BY MR. ATKESON:
Q. Mr. Much, what were you told about what analysis you 09:04:48
were supposed to make? 09:04:48
A. I was told that they were in need of an analysis of 09:05:00

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the profitability of the six tobacco companies in 09:05:08
the state of Minnesota for the period '54 to '96. 09:05:12
Q. And did they ask you to perform that? 09:05:20
A. Yes. 09:05:20
Q. Were you asked to do anything else? 09:05:26
A. Yes. 09:05:28
Q. And what else was that? 09:05:30
A. Subsequently I was asked to take a look at the 09:05:34

relative profitability of the tobacco companies 09:05:44
vis-a-vis other companies -- or other categories of 09:05:52
companies. 09:05:52
Q. Do you recall the categories of companies they asked 09:05:56
you to look at? 09:05:58
A. Yes. 09:05:58
Q. And what were those categories? 09:06:00
A. Basically other consumer products companies and 09:06:06
pharmaceutical companies. 09:06:08
Q. You ended up looking at the branded food products 09:06:24
industry; do you recall that? 09:06:26
A. Yes. 09:06:26
Q. Did they ask you to look at that one? 09:06:28
A. Not specifically. 09:06:32
Q. How about alcoholic beverages, did they ask you to 09:06:36
look at that one specifically? 09:06:38
A. I don't recall their specifically saying we want you 09:06:44
to look at this industry or that industry. It was 09:06:46
more in the general category of -- 09:06:48

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20	Q.	Consumer products?	09:06:50
21	A.	-- look at some consumer products industries.	09:06:52
22	Q.	So you were allowed to make your choices in those?	09:06:54
23	A.	Yes.	09:06:56
24	Q.	Were there any that you looked at that didn't make	09:06:58
25		it into the report?	09:07:00

1	A.	No.	09:07:02
2	Q.	Did they specifically ask you to look at	09:07:06
3		pharmaceuticals?	09:07:08
4	A.	Yes.	09:07:08
5	Q.	What information did they give you about the case;	09:07:20
6		what did they tell you the case was about?	09:07:24
7	A.	We really didn't discuss the case in the bigger	09:07:32
8		picture. We were only looking at what my role was.	09:07:36
9		The only thing I was provided with was a copy of the	09:07:38
10		complaint, other than information that I requested.	09:07:42
11	Q.	Have you read the complaint?	09:07:42
12	A.	At one time, yes.	09:07:44
13	Q.	When were you first asked to perform this analysis;	09:07:52
14		do you recall when?	09:07:54
15	A.	Which analysis?	09:07:56
16	Q.	The analysis of the profitability of the six	09:07:58
17		companies.	09:07:58
18	A.	That goes back to January.	09:08:00
19	Q.	And when were you asked to look at the relative	09:08:04
20		profitability of that compared to the other	09:08:08
21		industries?	09:08:08
22	A.	That was in later months. I don't know the exact	09:08:16

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date, but it was not immediate. 09:08:18
Q. Did that come from your suggestion or was it 09:08:20
something they asked you to do? 09:08:22

A. It was not my suggestion. 09:08:24
Q. Did they ask you to perform any other analysis in 09:08:32
this case? 09:08:32
A. No. Well, excuse me. The R&D analysis, yes. 09:08:42
Q. What did they ask you to do with regard to that? 09:08:44
A. In that analysis, to merely identify company by 09:08:54
company various expenditures, R&D, youth prevention, 09:09:00
advertising/marketing/promotion, for the company -- 09:09:04
for individual companies of the industry. 09:09:06
Q. You mentioned "youth prevention." Did you have an 09:09:14
understanding before you got involved in this case 09:09:16
what that meant? 09:09:18
A. No. 09:09:18
Q. Do you have an understanding now what it means? 09:09:20
A. Only from the standpoint of the dollars spent by the 09:09:26
companies identified. 09:09:28
Q. You don't know what those dollars go to? 09:09:32
A. Only as they have been identified and disclosed; 09:09:36
that's it. 09:09:36
Q. And you say "identified and disclosed." Do you mean 09:09:40
by the defendants? 09:09:42
A. Yes. 09:09:42
Q. How did it come about that you were asked to do that 09:09:44
analysis? 09:09:46

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A. As I recall, we were already developing a financial 09:09:58

analysis on the companies and we were asked 09:10:02
subsequently to do a profitability analysis on the 09:10:04
companies; would you please identify these expense 09:10:08
categories as well over the same time period and the 09:10:12
dollars spent in those expense categories. 09:10:14
Q. Now, you completed your report on profitability -- 09:10:24
it's dated May 30, '97. 09:10:28
A. Yes. 09:10:28
Q. Have you done any work on the profitability report 09:10:32
or in that area since then? 09:10:34
A. No. 09:10:34
Q. And on the R&D analysis there are two reports, the 09:10:42
second of which, I believe, is dated July 2nd. Have 09:10:50
you done any work since you completed the amended 09:10:54
report? 09:10:56
A. No. 09:10:56
Q. Do you intend to do any more work, that you are 09:11:00
aware of, on either of these reports? 09:11:02
A. If I am asked to do so, yes. 09:11:04
Q. But you have no current intention to do that? 09:11:06
A. No. 09:11:06
Q. Did you keep any notes while you were doing your 09:11:16
analysis? 09:11:16
A. I didn't take any notes during my analysis. 09:11:20
Q. So all of the numbers and the material that appears 09:11:24

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in this report, none of it would have ever been on a note? 09:11:28

A. That's correct. 09:11:30

Q. Do you recall specifically what opinions you were asked to give? 09:11:40

A. I think I have answered that question. 09:11:46

Q. You said what analysis you were supposed to do. 09:11:52

A. Oh, okay. 09:11:54

Q. The question is: Were you asked specifically to give any opinions with regard to that analysis? 09:11:56

A. Ultimately my analysis would be the basis to give an opinion, yes, on profitability, on relative profitability, and on the R&D, youth prevention, marketing expenditures, et cetera, as contained in my reports. So my reports represent the opinions I was asked to give. 09:12:04

Q. Do you have any other opinions with respect to this case that are not contained in the reports? 09:12:22

A. No. 09:12:24

Q. Are you familiar with the theory of market share liability? 09:12:32

MR. MANNING: Objection, asks for a legal conclusion on a legal matter, lack of competence, lack of foundation. 09:12:40

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BY MR. ATKESON:

Q. You can still answer the question. 09:12:48

A. I have to have her repeat it. 09:12:50

(Question on page 26, line 20
read back by the court reporter.) 09:12:58

A. No. 09:12:58

Q. As far as you know, you are not going to give an opinion on market share liability in this case? 09:13:06 09:13:10

MR. MANNING: It's been asked and answered. The witness has already said he is not familiar with the concept, Counsel. 09:13:12 09:13:14 09:13:18

A. I do not expect to give such an opinion. 09:13:20

Q. You have not been asked to? 09:13:22

A. That is correct. 09:13:22

Q. When you read the complaint, did you note that there was a claim regarding antitrust? 09:13:32 09:13:40

A. I don't recall. I read the complaint early on. There may or may not have been; I don't recall. 09:13:42 09:13:46

Q. As far as you are aware, is it true that you are not expecting to give an opinion on antitrust issues in this case? 09:13:54 09:13:58 09:14:00

A. I will not be giving -- I was not asked, nor will I be giving, any opinion on antitrust issues. 09:14:04 09:14:10

Q. Let's start with the analysis of profitability as an issue. 09:14:18 09:14:20

A. All right. 09:14:20

Q. You say that you requested information. What information did you request? 09:14:24 09:14:26

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A. First I requested any information regarding what the individual defendant companies had or provided on Minnesota tobacco profitability. I was told no such information was available. 09:14:38 09:14:46 09:14:50 09:14:54

From there we requested all the annual reports, reports to shareholders for the years in question that were available on those companies. 09:15:06 09:15:10 09:15:14

We requested any market data, for example, the tobacco burden report or the Maxwell report; any information that would be available to help us identify revenues, market shares, unit volumes. 09:15:24 09:15:30 09:15:34 09:15:44

Those are the types of documents that we requested. And we reviewed a variety of additional documents as well. And all the documents that we've used are identified in our report. 09:15:46 09:15:52 09:15:56 09:15:58

Q. Who worked with you at Houlihan Lokey on this? 09:16:04

A. Under my direction and supervision, there were three additional primary people: Jay Novak, an associate in our firm; John Rakowski, a senior financial analyst in our firm; Mark Iwanski, a financial analyst in our firm; and, of course, word processors and administrative support. 09:16:14 09:16:20 09:16:26 09:16:30 09:16:32 09:16:34

Q. Did all three of those individuals work on the analysis of profitability of the six companies? 09:16:38 09:16:42

A. At one point or another, yes. 09:16:46

Q. And would all three of those individuals also worked on the analysis of relative profitability? 09:16:48 09:16:52

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A. At one point or another, yes. 09:16:54
Q. And same question with regard to the R&D analysis. 09:16:56
A. Yes. 09:16:58
Q. Did you bring in anyone special to deal with one of those three topics? 09:17:06
A. No. 09:17:08
(Defendants' Exhibits 2002 and 2003 marked for identification.) 09:18:08
BY MR. ATKESON:
Q. Let me hand these two to you. Let's start with 2002. Do you recognize this document? It's the bigger one. 09:18:24
A. Yes. 09:18:36
Q. Do you know who prepared this? 09:18:40
A. I believe the law firm did. 09:18:40
Q. Is this from a list you gave them? 09:18:44
A. I believe it's -- you would have to ask them what it's from, but I believe this is based upon information provided to us that we requested. 09:18:48
Q. Did you have any input into this document? 09:18:58

A. Only from the standpoint of information that I requested. And to the extent that I received that information, I believe that it was part of this list. 09:19:00
Q. You believe this is a list of documents that were given to you by the plaintiffs? 09:19:12
A. Yes. 09:19:14
Q. Did you read each of these documents? 09:19:16

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A. I would have to go back and look at the document as far as -- for example, I can't answer the questions as I sit here today because these are identified by serial numbers. I will recognize them by annual report names or annual report for 1992 or something like that, and then I would be able to answer your question. But I can't answer it as I sit here right now. 09:19:20 09:19:24 09:19:30 09:19:32 09:19:38 09:19:40 09:19:42 09:19:44

Q. Did you look at any documents that did not have financial data in them? 09:19:46 09:19:48

A. I believe the documents we reviewed all had financial data in them, but there could be one or two that may not have had that. But the vast majority of what I looked at had financial data in it one way or another. 09:20:00 09:20:04 09:20:06 09:20:08 09:20:10

Q. Were you looking, when you were looking at these documents, for something other than financial data? 09:20:12 09:20:14

A. No. 09:20:28

Q. If you could look at 2003. I will just represent to you these three pages accompanied your amended report. 09:20:46 09:20:50 09:20:54

A. Yes. 09:20:54

Q. As far as you know, are these the documents that you relied on or enabled you to supplement your report on research and development? 09:20:58 09:21:02 09:21:04

A. I don't think I can answer that question as I sit here. I would have to actually look at the 09:21:08 09:21:10

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documents to be able to give you an accurate answer. 09:21:12
Q. So you don't know what these documents relate to 09:21:14
without looking at them? 09:21:16
A. I would have to look at the underlying source 09:21:18
documents. 09:21:18
MR. ATKESON: Let's mark 2004, 5, 6, and 09:21:38
7. 09:21:40
(Defendants' Exhibits 2004-2007
marked for identification.)
MR. MANNING: Counsel, I am not seeing any 09:22:26
Bates numbers on these documents you provided to 09:22:28
me. Are there? 09:22:28
MR. ATKESON: No.
MR. MANNING: Why not?
MR. ATKESON: These are documents you 09:22:30

produced to us with his report. 09:22:32
MR. MOCCIO: What do you mean these are 09:22:48
documents we produced to you? You mean the actual 09:22:50
documents?
MR. ATKESON: Let's go off the record for 09:22:52
a minute. 09:22:54
(Discussion off the record.)
MR. MANNING: We are going to take a short 09:24:20
break, Counsel. 09:24:22
MR. ATKESON: Sure. 09:24:22
(Break taken.) 09:24:24
MR. MANNING: It is my understanding that 09:31:04
document numbers 204, 205 -- when I say that I am 09:31:14

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saying 2004, 2005, 2006, and 2007 were produced with the expert report of Cheryl Perry, not with the expert report of this witness or by this witness. 09:31:20 09:31:26 09:31:28

And pursuant to the letter from Mr. Schwartzbauer, which I believe arrived yesterday, any documents such as this would have absolutely been required to be predesignated. 09:31:36 09:31:38 09:31:42 09:31:46

So in any event, that's the clarification on the documents. We would object to the documents being used at all in the deposition. 09:31:50 09:31:52 09:31:56

MR. ATKESON: Well, let me just say, from my understanding these were produced with Mr. Much's 09:31:58 09:32:02

report. We can clear this up very quickly; we just ask the witness has he seen any of these documents before. And if the answer is no, then -- 09:32:04 09:32:06 09:32:08

MR. MANNING: You are welcome to do that. 09:32:12

BY MR. ATKESON:

Q. Mr. Much, could you take a look at documents 2004, 2005, 6, and 7? And just let me know if you have seen those before, if they have been provided to you prior to this date. 09:32:16 09:32:18 09:32:20 09:32:22

A. I have never seen these documents before. 09:32:40

MR. ATKESON: That makes it easy, then. So let's mark 2008 and 2009. 09:32:50 09:33:00

(Defendants' Exhibits 2008 and 2009 marked for identification.) 09:33:18

BY MR. ATKESON:

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Q. Could you take a look at those documents and see if you recognize them? 09:33:32 09:33:32
A. Yes, I do. 09:33:50
Q. What are they? 09:33:50
A. These are additional documents -- or these are documents that I relied upon in preparing my analysis. 09:33:52 09:33:56 09:33:56
Q. Let's focus on 2008 for a minute. This indicates the companies you looked at in doing your pharmaceutical review, as well as the consumer 09:34:06 09:34:10 09:34:16

products review; is that correct? 09:34:18
A. Yes. As well as you will see in the last two pages of that exhibit information dealing with the individual tobacco companies or their parents and then information from the Maxwell report, which goes beyond just the consumer products companies. 09:34:38 09:34:42 09:34:46 09:34:50 09:34:52
Q. Were there any companies that you looked at outside of the tobacco industry that are not included on this list? 09:35:00 09:35:02 09:35:02
A. Not that I recall. 09:35:18
Q. And all of these documents were collected from public sources, at least with regard to the companies other than the tobacco industry? 09:35:26 09:35:30 09:35:32
A. Yes. 09:35:42
Q. Let's return, then, to your analysis of the profitability question. You discussed a little earlier this morning the information you requested that the plaintiffs gather in some fashion on 09:35:56 09:36:00 09:36:02 09:36:08

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profitability. And you talked about Minnesota profitability; there wasn't any. You then said you wanted annual reports and reports to the shareholders of the companies; and then market data, the tobacco burden and the Maxwell report. Were you able to get all of that information? 09:36:10 09:36:14 09:36:16 09:36:20 09:36:24 09:36:26

A. Yes. 09:36:28

Q. Was there anything you wanted you didn't get? 09:36:30

A. Sure. 09:36:38

Q. What was that? 09:36:40

A. I would have liked -- and asked for early on -- information that the tobacco companies had on Minnesota. I was told that was not available. 09:36:42 09:36:46 09:36:48

Q. Is there anything else you wanted you didn't get? 09:36:50

A. It would fit in that general category of Minnesota-specific information, either by individual tobacco company or by the tobacco industry. And the information that was available we got, and the information that wasn't available we didn't get. 09:36:54 09:36:58 09:37:06 09:37:10 09:37:12

Q. Was there any analysis you were unable to do because of the lack of information? 09:37:16 09:37:16

A. No. 09:37:20

Q. Once you got this information, what did you do? 09:37:26

A. We are talking with respect to the Minnesota profitability only? 09:37:38 09:37:40

Q. Let's focus right now on the profitability analysis of the six companies. 09:37:44 09:37:46

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A. Okay. We started with Minnesota-specific 09:37:56
information, combined that with national 09:38:00
information; combined that with information from the 09:38:06
individual tobacco companies, for example, their 09:38:08
levels of profitability; put the different pieces 09:38:14

together; went year by year, company by company, and 09:38:22
compiled the profitability over the years by company 09:38:30
in the state of Minnesota. 09:38:30
Q. And by "profitability," are you talking about 09:38:34
operating profit? 09:38:36
A. Yes. 09:38:38
Q. And in terms of calculating operating profit, did 09:38:48
you rely on the information provided in the annual 09:38:54
reports and the like from the defendants? 09:38:56
A. Yes. 09:38:56
Q. Did you manipulate those numbers in any way? 09:39:02
A. Tell me what you mean by "manipulate." I don't 09:39:06
think I did. 09:39:08
Q. If you saw printed on the page that the operating 09:39:10
profit for a given year was X amount, did you then 09:39:12
say, no, I need to change that through some formula 09:39:18
to be something else or did you just say I am going 09:39:20
to take X amount and plop it into my report? 09:39:22
A. X amount would be incorrect. It would be 09:39:24
X percentage. 09:39:26
Q. X percentage, fair enough. 09:39:26
A. X percentage would be the number applied in our 09:39:30
report. 09:39:30

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Q. So you accepted at face value whatever was in the reports? 09:39:34 09:39:36

A. Yes. 09:39:36
Q. Now, in terms of Minnesota -- you said you started with Minnesota-specific data? 09:39:44 09:39:44
A. Yes. 09:39:46
Q. What Minnesota-specific data did you have? 09:39:46
A. The first piece of data would be the price per pack for the state of Minnesota as published in the tobacco burden report. 09:39:54 09:39:58 09:40:00
Q. Anything else? 09:40:02
A. The number of packs sold in the state of Minnesota. 09:40:06
Q. Why don't you go ahead and just give me the list, if you recall it. 09:40:12 09:40:12
A. Oh, okay. Should I go right through; is that what you are saying? 09:40:14 09:40:14
Q. In terms of the Minnesota-specific information that you had. 09:40:16 09:40:18
A. Oh. That was the Minnesota-specific information. 09:40:20
Q. In terms of national information, are you talking about the relative market shares of the various companies? 09:40:24 09:40:28 09:40:28
A. Yes. 09:40:30
Q. And you got that from the Maxwell reports? 09:40:32
A. The underlying data from the Maxwell reports, yes. 09:40:36
MR. ATKESON: Let's go ahead and mark this as 2010 and 2011. 09:41:08 09:41:12

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(Defendants' Exhibits 2010 and 2011 marked for identification.) 09:41:16

BY MR. ATKESON:

Q. Let's start with 2010. Do you recognize that? 09:41:32

A. Yes. 09:41:32

Q. What is it? 09:41:34

A. This is my report on profitability. 09:41:36

Q. And this contains not only your analysis of the profitability of the six companies, but also the relative profitability of the six companies as compared to the pharmaceutical and the consumer products industries? 09:41:44 09:41:46 09:41:48 09:41:50 09:41:52

A. Yes. 09:41:54

MR. MANNING: Counsel, assuming you are going to ask him questions about this, I am going to have him look at the actual reports so that he -- it's a little more readable than the copies you have given him as the exhibit. 09:41:56 09:41:58 09:42:00 09:42:04 09:42:04

MR. ATKESON: Can we mark that as the exhibit? 09:42:10 09:42:10

MR. MANNING: Well, no. We'll keep this as an exhibit, but he will be looking at what is 2010 and we will understand it and refer to it as such; we will refer to the right numbers. 09:42:12 09:42:14 09:42:18 09:42:20

MR. ATKESON: I would prefer, if he is 09:42:24

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going to be actually consulting that one, that we just mark that. 09:42:26 09:42:28

MR. MANNING: Do you intend to ask him questions about the report? 09:42:40 09:42:40

MR. ATKESON: Yes. 09:42:42

MR. MOCCIO: We are just going to make sure that these are clean copies. 09:42:48 09:42:50

MR. ATKESON: That's fine. Do you want him to look at the exhibits in the same fashion? 09:43:32 09:43:34

MR. MANNING: Remark them. 09:43:38

(Defendants' Exhibits 2010 and 2011 remarked for identification.) 09:43:50

BY MR. ATKESON:

Q. I assume you still recognize these documents? 09:43:54

A. Yes. 09:43:54

Q. Let's go first to the expert analysis. And I guess you should keep these documents next to each other, because we are going to be going back and forth. 09:44:06 09:44:08 09:44:10

A. I understand. 09:44:12

Q. If you could turn to page 5, this is a page entitled "Defendant Companies Summary, 1954-96." Is that what you have? 09:44:22 09:44:28 09:44:28

A. Yes. 09:44:30

Q. And is the backup to this page in Exhibit 2011? 09:44:36

A. Yes. 09:44:38

Q. If you could then turn in Exhibit 2011 to tab 1A, 09:44:54

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it's the analysis of the American Tobacco Company. 09:44:58
Do you have that? 09:45:00
A. Yes. 09:45:00
Q. And if you could turn then to page 5 of that, which 09:45:04
I believe is the second to the last page. 09:45:12
A. Yes. 09:45:12
Q. Do you see that the -- the revenue under 09:45:20
"Consolidated Corporate Group" for 1954 to 1996, 09:45:24
that it is 212,455,000,000? 09:45:30
A. Yes. 09:45:30
Q. If you will now look at the revenue on page 5 for 09:45:34
American Tobacco Company, it says 235,401,000,000. 09:45:40
Do you know why there is a difference between those 09:45:42
numbers? 09:45:42
A. Yes. 09:45:42
Q. Why is there? 09:45:44
A. Because the 235,401 on page 5 includes the 09:45:52
international operations -- tobacco operations for 09:45:54
American Brands for '95 and '96 in the consolidated 09:45:58
number. 09:46:00
Q. And is that contained anywhere in 2011? 09:46:04
A. Yes. 09:46:06
Q. Where is that? 09:46:06
A. I am going to refer you to tab 3A, page 3. And if 09:46:40

you would add the 212,455 for American Tobacco 09:46:46
consolidated group and the American Brands 09:46:52
consolidated segments down at the bottom of the page 09:46:54
for '94, '95, and '96, you will see the numbers add 09:46:58

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exactly to 235,401. And the same will occur with operating profit. 09:47:00 09:47:00

Q. Okay. For all the rest of the numbers for the other companies, though, those would come just out of -- you didn't have to combine two different numbers; is that correct? 09:47:06 09:47:10 09:47:14 09:47:14

A. That is correct. 09:47:14

Q. Now, in terms of coming up with this -- let's just start with the global consolidated operations revenue number. That is simply an addition of the global revenue numbers for all of the years, '54 to '96? 09:47:20 09:47:22 09:47:28 09:47:32 09:47:34

A. Yes. 09:47:34

Q. Did you have to apply any analysis to come up with that number? 09:47:38 09:47:40

A. Only addition. 09:47:42

Q. And how about for the operating profit number? 09:47:48

A. Same thing. 09:47:48

Q. Let's use page 5 of American Tobacco of 2011; the one you have got, I think, open. 09:48:04 09:48:06

A. Page 5? 09:48:08

Q. Page 5. Just as an example, the first category you have got is domestic tobacco. Is that a category that's broken out in all the financial reports? 09:48:14 09:48:16 09:48:18

A. No. 09:48:34

Q. How did you go about coming up with that number where it wasn't broken out? 09:48:40 09:48:42

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A. If it was not broken out, we made the assumption that global tobacco and domestic tobacco would be the same. 09:48:46 09:48:50 09:48:50

Q. And in terms of coming up with the category international tobacco would the same answer hold, if it wasn't broken out you would assume that it was zero? 09:49:00 09:49:04 09:49:08 09:49:08

A. No. If it's not broken out, you will see on page 1 in that same section it doesn't have a zero, it has just got a dash. That means it's not broken out. 09:49:14 09:49:18 09:49:22

Q. But you didn't attribute any dollars to it; you just assumed that they were all in domestic tobacco, or that's the way you reported it? 09:49:28 09:49:32 09:49:34

A. That is correct. 09:49:34

Q. Now, were there any instances in which you were unable to determine a global tobacco number? 09:49:42 09:49:46

A. I believe we were always provided with global tobacco by company. There were issues as to classification. 09:50:04 09:50:08 09:50:12

Q. How did you resolve those issues? 09:50:14

A. We took what was reported by the companies. 09:50:18

Q. And can you explain what consolidated corporate group means? 09:50:28 09:50:28

A. Consolidated corporate group would be that if there was only tobacco, it would reflect only tobacco operations. If there were other operations of nontobacco, those would be identified. For example, in the American Brands analysis you saw more than 09:50:34 09:50:38 09:50:40 09:50:46 09:50:48

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tobacco. Then it added up down to a consolidated 09:50:52
corporate group. So it would be the overall 09:50:54
corporate entity in that category. 09:50:56
Q. Now, in terms of the Minnesota operations, were any 09:51:06
of the numbers or any of the categories reported 09:51:08
here provided to you by the defendants or did you 09:51:14
have to calculate all of these numbers? 09:51:16
A. We had to calculate all these numbers. 09:51:24
Q. Let's go through, then, exactly how you did that. 09:51:26
A. Sure. 09:51:28
Q. And let's start with the Minnesota operations 09:51:30
revenue. 09:51:30
A. Okay. If you would like to see exactly how I did 09:51:36
that, that's actually laid out in tab 4A. Do you 09:52:02
want -- how would you like to proceed on this? 09:52:04
Q. If you could just walk -- pick a year and just show 09:52:08

us the math and how you did the calculation. And it 09:52:12
doesn't have to be American Tobacco; whatever is 09:52:14
easy. 09:52:16
A. Let's pick a more recent year. Let's go to 1984; go 09:52:20
to page 3. Previously we talked about starting with 09:52:30
the Minnesota price per pack -- that's line 1 -- 09:52:32
times the unit volume in Minnesota. Number of packs 09:52:36
is line 2. Total retail sales is line 5. There is 09:52:44
a difference between what the public pays and what 09:52:46
the manufacturer receives, and that difference is 09:52:52
shown in line 6, which we call the wholesale 09:52:54

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margin. 09:52:56
Q. Let me just stop you right there. 09:52:58
A. Sure. 09:52:58
Q. You were only able to come up with the wholesale 09:53:00
margin for a limited number of years in this 09:53:02
analysis; is that correct? 09:53:04
A. We were -- let me make sure I understand your 09:53:14
question. You said we "were only able to come up." 09:53:16
We actually reviewed a document that identified what 09:53:20
Philip Morris estimated to be the difference for 09:53:26
years '80 to '89. 09:53:30
Q. And otherwise you just assumed it was 50 percent? 09:53:32
A. Yes. 09:53:34
Q. What was the basis for that assumption? 09:53:36

A. The document from Philip Morris, it's a very tight 09:53:40
analysis. What you will see is I think it never 09:53:44
goes below 54 percent and it's consistently in the 09:53:50
50s; it goes as high as 58.6 percent. So in our 09:54:00
analysis it was reasonable to conclude that a 09:54:04
50 percent margin was appropriate. 09:54:06
Q. I'm sorry. I had stopped you. You can go on, then, 09:54:10
from that line. 09:54:12
A. Certainly. Thank you. From there we have the total 09:54:16
manufacturer sales in Minnesota at line 7. 09:54:18
Q. And in terms of doing the calculation, all you did 09:54:22
here was -- I don't mean to characterize it as 09:54:26
"all," but in terms of coming up with that number, 09:54:28
you took the total cigarette retail sales and 09:54:32

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multiplied it times the assumed -- or the wholesale margin, if you had it, and that results in line 7? 09:54:34 09:54:36

A. Correct. It's a very straightforward calculation. 09:54:40

Q. Fine. 09:54:42

A. The next category is market share. We have market share from the Maxwell reports. Actually, we have individual unit volume in the Maxwell reports. From that you can calculate share by company. 09:54:48 09:54:50 09:54:52 09:54:56

Q. And how is the individual unit volume -- what measure or definition do they use for that? 09:55:02 09:55:04

A. Have you seen the big spreadsheets? In the big 09:55:08

spreadsheets they actually break out by company individual brands and sticks sold. And from that you can work back in terms of sticks sold by brand by company and you can actually identify company share relative to the other companies, and that's what this calculation is. 09:55:12 09:55:16 09:55:20 09:55:22 09:55:26 09:55:26

Q. Do you have an understanding of what a stick is? 09:55:30

A. It's a cigarette. 09:55:32

Q. And did you have to figure out which brands go with which company? 09:55:38 09:55:38

A. That's identified in the report. 09:55:40

Q. So in terms of looking at the Maxwell reports, you could go to Philip Morris and see how many sticks they sold in Minnesota? 09:55:52 09:55:56 09:55:58

A. Let's stop for a second. In the big spreadsheets you actually have the sticks sold by company 09:56:04 09:56:06

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nationally through '83, I believe. And in subsequent reports, '84 and thereafter, they actually break out percentage share. Those are national numbers. Those national numbers are applied to Minnesota percentage-wise. 09:56:10 09:56:12 09:56:14 09:56:18 09:56:20

Q. And you said up until '83 you had it broken out in that fashion or after '83? 09:56:28 09:56:30

A. There is actually a spreadsheet -- there are two spreadsheets which are quite large that break out 09:56:32 09:56:36

cigarettes sold in unit volume by brand by company year by year by year. From that you can calculate share. 09:56:38 09:56:42 09:56:42

And if I recall, I think it starts in '84 where there are actually published investment research reports by John Maxwell at Wheat, First, Butcher, Singer where shares are identified collectively, and that is the basis for this market share data. We are applying the national share to the state of Minnesota. 09:56:48 09:56:50 09:56:54 09:56:58 09:57:04 09:57:06 09:57:08

Q. So what we see, then, on lines 10 through 16 is just straight out of the Maxwell report? 09:57:16 09:57:18

A. In essence, yes. 09:57:20

Q. When you say "in essence," is there something extra there? 09:57:22 09:57:24

A. For example, I identified that in the earlier years we actually had a specific unit volume in terms of numbers of sticks, numbers of cigarettes. These are in percentages, so we have to work through the 09:57:26 09:57:30 09:57:32 09:57:34

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calculation. 09:57:36

Q. So in earlier years you just had to figure out the percentages? 09:57:38 09:57:40

A. Yes. Actually, that detail is laid out in the next tab, page 1, and page 2, page 3. The actual numbers of sticks are identified. Where you see, starting 09:57:46 09:57:54 09:57:56

on line 22, market shares (volume number of sticks) in billions -- 09:58:00 09:58:00

Q. Right.

A. -- that's out of the Maxwell reports. 09:58:06

Q. So just staying with that page 1 for a minute, if we were to take -- let's pick a year. In 1968 American Tobacco has 116 billion reported there out of a total of 528.7 billion. What you are saying is that 116 is 21.9 percent of the total? 09:58:08 09:58:12 09:58:16 09:58:20 09:58:24

A. That is correct. And you will see that that flows through. If you go to page 1 of tab 4A, it would be the same 21.9 percent. 09:58:26 09:58:32 09:58:34

Q. So that the calculation you had to make there was just the percentage; when you had the stick numbers, you just had to calculate the percentage? 09:58:36 09:58:40 09:58:42

A. Yes, sir. 09:58:42

Q. And then that gets reported here. And then how do you -- if you could take it from there, then. 09:58:46 09:58:50

A. Yes, sir. We now have identified the market share. And if we apply the market share times the total manufacturer sales in Minnesota, you will have the 09:58:52 09:58:56 09:59:00

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sales in Minnesota by manufacturer, and that's lines 20 through 26. 09:59:04 09:59:06

Q. And the underlying assumption here is that the company's national market share would be the same as 09:59:08 09:59:12

their Minnesota market share? 09:59:14

A. Yes. We are assuming the national market share applies to the state of Minnesota, yes, sir. 09:59:16 09:59:18

Q. Were there any other assumptions you had to make about the way things operated in Minnesota? 09:59:22 09:59:24

A. At this point I think we have described them. What you will see in the next calculation is that we applied -- the profit margin for domestic tobacco also applies to the state of Minnesota. And that is set forth on lines 30 through 36, where these are the profit margins by company by year for the domestic operation and we have applied that to Minnesota sales. 09:59:30 09:59:34 09:59:38 09:59:46 09:59:50 09:59:54 09:59:58 09:59:58

Q. And these numbers come from the annual reports of the companies? 10:00:04 10:00:04

A. Unless we were provided -- for example, Philip Morris and Brown & Williamson provided a summary of revenues and profitability. And if we were provided it in that fashion, we would first use that. And if we were not provided information like that from the companies, we then used the annual reports. 10:00:16 10:00:22 10:00:26 10:00:28 10:00:32 10:00:34

Q. Other than having to discern whether or not you had been given specific information or whether you had to use the information out of the annual reports, 10:00:40 10:00:42 10:00:44

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was there any particular analysis or calculations 10:00:48

you had to make to come up with these profit 10:00:50
margins? 10:00:50
A. Yes. What you are taking is the operating profit as 10:00:56
reported, either through the information received 10:00:58
from the companies or from the annual reports, 10:01:02
divided by the sales, either reported from the 10:01:06
companies or from the annual reports, and there you 10:01:08
derive a profit margin. And that is the profit 10:01:12
margin you see here. 10:01:14
Q. So typically when you were looking at these annual 10:01:22
reports and other financial documents, the profit 10:01:24
margin was not reported as a percentage? 10:01:24
A. Typically not. The actual dollars were reported. 10:01:26
Sometimes they will talk about their margins in the 10:01:28
report, but we are focusing on the actual dollars 10:01:32
and using that to derive the percentages. 10:01:34
Q. Now, do you have included in these exhibits, the 10:01:38
same way you did for the market share, the 10:01:40
underlying data where you calculated those 10:01:44
percentages? 10:01:44
A. Oh. That comes from the earlier pages where you go 10:01:50
company by company. 10:01:52
Q. So it's lifting those numbers out of there and 10:01:54
putting them in here? 10:01:54
A. It's lifting the percentages out of there and 10:01:58

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applying them to here, right. 10:02:00

Q. Fair enough. And then your last set of calculations? 10:02:04

A. The last set of calculations is taking the profit margin times the Minnesota sales. And the result of that is to identify profits -- operating profits by company by year. 10:02:08 10:02:14 10:02:18 10:02:20

Q. And this is, accordingly, your best estimate as to what the profits of each of the defendants was in Minnesota in any of these given years? 10:02:28 10:02:32 10:02:36

A. This is my analysis of what the profits were in Minnesota in those years. 10:02:38 10:02:40

Q. Okay. Let's go back, then, to 2010; the report, not the exhibits. 10:02:58 10:02:58

A. All right. 10:03:00

Q. Page 6 we have now moved down from global consolidated and global tobacco to domestic tobacco. These numbers reported here are just aggregates of what you have got reported in the exhibits? 10:03:10 10:03:14 10:03:18 10:03:20 10:03:22

A. Yes. 10:03:22

Q. And, similarly, any of these revenue or operating profit numbers is the sum of the individual years reported in the exhibits? 10:03:28 10:03:32 10:03:34

A. Yes. 10:03:36

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Q. Okay. Then page 7. This, I take it, reports -- if we were to go to the back of tab 4 and look at your summary numbers, we would have those there; is that correct? 10:03:48 10:03:52 10:03:56 10:03:56

A. Yes. 10:03:58

Q. Let's then flip. Your next section in this report is called "United States Tobacco Market." Let's focus on page 9. The second bullet is entitled "Diversification began in the 1960s." How is this, the information contained here, relevant to your analysis? 10:04:04 10:04:12 10:04:22 10:04:28 10:04:30 10:04:32

A. What this merely identifies is that from the substantial profitability of these companies domestically, they reinvested in their future and their future was in diversification; merely identifying the ultimate -- one of the ultimate uses of the profitability earned, that's all it does. 10:04:38 10:04:42 10:04:48 10:04:52 10:04:54 10:04:58

Q. Were you asked to determine how the companies used whatever profits they made? 10:05:02 10:05:02

A. We were asked to take a look at the expansion of the companies and the resulting diversification to international tobacco and nontobacco, yes, as part of our profitability analysis and overall view of the -- analysis of the industry. 10:05:24 10:05:28 10:05:32 10:05:36 10:05:38

Q. We need to step back, then. Can you explain, then, 10:05:42

what you think the scope was of your profitability analysis that you were asked to do? 10:05:46 10:05:48

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MR. MANNING: Objection, asked and answered, repetitive. 10:05:50 10:05:54

A. The first aspect was to identify profitability in the state of Minnesota for the years identified, '54 to '96. 10:05:56 10:06:00 10:06:02

We were also asked to look at profitability of the tobacco companies vis-a-vis other groupings that we previously identified; as well as part of that we were asked to take a look at their expansion and diversification into other areas, as identified in my report here. 10:06:04 10:06:08 10:06:10 10:06:14 10:06:18 10:06:20

Q. Was there anything else, putting aside the R&D report which we will come to? 10:06:24 10:06:26

A. I think that's it. 10:06:28

Q. Let me just confirm the sources that you listed on pages 10 and 11 of 2010. Those are the only sources for these two graphs? 10:07:02 10:07:06 10:07:08

A. You are speaking of my report? 10:07:10

Q. Yes, of your report, 2010. Sorry. 10:07:14

A. You are asking about the unit volume? 10:07:16

Q. Right, and then the domestic retail dollar volume. 10:07:20

A. Yes, those are the only sources used, the Maxwell report and the tobacco burden report. 10:07:24 10:07:26

Q. Let me ask a question about these exhibits. If you can look at the Brown & Williamson section, which I believe is tab B. 10:07:34 10:07:38 10:07:42

A. Yes. 10:07:42

Q. If you can go -- I may not have the tab right, but 10:07:50

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following that first set of information on Brown & Williamson is a set of information listed in British pounds. 10:07:54 10:07:58 10:07:58

A. Yes. 10:07:58

Q. Why is that included here? 10:08:00

A. The purpose of that is really backup to page 36. 10:08:18

Q. Of the report? 10:08:18

A. Yes. Keep in mind in the report we always typically start with a -- or typically start with a global snapshot. From there you go down to tobacco, down to domestic tobacco. 10:08:22 10:08:26 10:08:30 10:08:30

And so the Brown & Williamson British pounds were used as backup for the global snapshot of that, which starts on page -- as I said, on page 36. 10:08:34 10:08:38 10:08:46 10:08:48

Q. Let me ask you a question in terms of this being backup. Other than the fact that this is reported in pounds, is there any difference between the first set of numbers for Brown & Williamson and the second? 10:09:00 10:09:04 10:09:06 10:09:10 10:09:10

A. No, I don't think so. But you have got -- let's just double-check this. You will see that Brown & Williamson -- we identify Brown & Williamson and we identify BAT, and all we are doing in British pounds is identifying the consolidated group and consolidated tobacco operations. This is not part of our domestic profitability analysis; it is merely 10:09:16 10:09:30 10:09:32 10:09:38 10:09:46 10:09:48 10:09:52

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for the overview of Brown & Williamson. 10:09:54
Q. But in terms of where your original numbers came 10:10:00
from, did they come from the Brown & Williamson 10:10:02
analysis and then you just simply converted them 10:10:06
into pounds? 10:10:06
A. No. I think you are confused; let me clarify that. 10:10:10
Q. Okay. 10:10:10
A. If you go to tab B, pages 1 through 5, the first two 10:10:24
categories which are missing data for '54 to '57, 10:10:28
they are domestic tobacco and global tobacco. Those 10:10:32
are specifically from the information provided by 10:10:34
the company, we actually got a summary, and that was 10:10:40
used for the upper category of domestic tobacco and 10:10:46
global tobacco. 10:10:46
And the domestic tobacco numbers provided 10:10:48
by the company were the basis for our domestic -- or 10:10:52
our Minnesota tobacco profitability analysis. 10:10:54
The only area that the British pounds -- 10:10:58

because we received the annual reports, obtained 10:11:02
annual reports that identified revenue and 10:11:04
profitability in British pounds, in order to put 10:11:08
them on an apples-to-apples comparison in terms of 10:11:10
our global view, the snapshot, we converted them 10:11:14
into dollars; that's it. 10:11:14
Q. So in terms of -- just to confirm that I have got 10:11:18
the understanding here, let's go to the British 10:11:20
pounds part. So you would have started with the 10:11:24
consolidated group -- let's take 1954 earnings of 10:11:26

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47 -- that would be million pounds? 10:11:30

A. Yes. 10:11:30

Q. Okay. And then you took the applicable exchange rate and came up that that would be $130 million? 10:11:34 10:11:38

A. Yes. 10:11:38

Q. And then just dropped that into the previous report listed in dollars? 10:11:40 10:11:42

A. For the global snapshot, yes, sir. It's not part of the Minnesota tobacco analysis. 10:11:46 10:11:48

Q. But that's the way the tables work together? 10:11:50

A. Yes. 10:11:58

Q. Do you want to add anything on that? 10:12:00

A. And you will see also on page 1 as a result of that, even though you have got -- I am looking at page 1, tab B. While you see BAT consolidated operating 10:12:04 10:12:06 10:12:12

profit for '54 to '57, you will see it actually -- drop down to Minnesota operations. Because we don't have the information that was provided by the company, it actually shows up as a zero in Minnesota tobacco profitability. 10:12:16 10:12:20 10:12:22 10:12:24 10:12:28

Q. Let's then go to page 13 of your report. 10:12:36

A. Yes, sir. 10:12:42

Q. This is a -- other than those missing four years for Brown & Williamson, this is a summary of the six tobacco companies? 10:12:44 10:12:46 10:12:48

A. There is some additional data missing besides Brown & Williamson, and that's Lorillard. 10:12:52 10:12:56

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Q. You did not put that in the footnote on the page, though? 10:13:00 10:13:00
A. That is correct. 10:13:06
Q. What else is missing? 10:13:06
A. That's it. 10:13:08
Q. And do you know what years those are for Lorillard? 10:13:12
A. If we go to Lorillard, it would be years '68 through '71. 10:13:22 10:13:34
Q. Is there anything else missing from page 13 -- I mean data missing from page 13? 10:13:38 10:13:42
A. No. 10:13:42
Q. And in terms of what's represented here, at the end of each of these sections you break it down into a 10:13:50 10:13:54

decade analysis; is that correct? 10:13:56
A. Yes. 10:13:56
Q. And so if we were to just add up the decade analysis for any of these particular decades for each of the six companies, we should come up with this number? 10:14:00 10:14:02 10:14:04
A. Yes. 10:14:06
Q. And the same for the operating profits? 10:14:08
A. Yes. 10:14:10
Q. If you can turn to page 14 and if you could explain how you calculated the composite profit margin here. 10:14:24 10:14:30 10:14:32
A. That would be adding up within a decade the operating profits domestically for each individual company and adding up the revenues domestically for each individual company. Dividing the operating 10:14:36 10:14:42 10:14:50 10:14:52

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profits sum by the revenues sum by decade will result in the percentages identified on page 14. So it is a revenue calculation. 10:14:54 10:15:00 10:15:02

Q. Now if you would flip ahead to page 17. 10:15:06

A. Yes. 10:15:06

Q. You will see there that you note that you calculate your weighted margin not by using dollars, but now by using units. 10:15:10 10:15:14 10:15:16

A. Correct. 10:15:16

Q. Why did you switch methods to do this? 10:15:18

A. We are not switching methods. We are merely identifying that you can calculate profitability in the U.S. with revenues as identified through our report company by company year by year in the aggregate. 10:15:22 10:15:38 10:15:44 10:15:48 10:15:48

When you get to Minnesota, what you will find is that with the margins changing over time and with the market share changing over time by company, there will be a slight difference in margins. And we are merely identifying that. 10:15:54 10:16:04 10:16:06 10:16:08 10:16:10

So it's not a change in methodology as it is showing it. 10:16:14 10:16:14

Q. Could you explain why, for instance, the composite domestic operating profit margin shown on page 14 for, say, 1960 to 1969, which is 13.7, why that is different than the average domestic operating profit margin in Minnesota for '60 to '69? 10:16:34 10:16:36 10:16:44 10:16:48 10:16:54

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A. Sure. Let's go to the exhibit volume, tab 4A. And you asked me about '60 to '69? 10:17:06 10:17:08

Q. If that's a bad decade -- 10:17:12

A. That's fine. 10:17:12

There are two things that are operative to that difference. One is you will notice that just looking at the years -- for example, '60 to '69, looking at market shares, what you will see is that 10:17:14 10:17:16 10:17:20 10:17:24

companies' market shares vary year by year; some go down, some go up, some go up and go down. 10:17:28 10:17:30

Also look at the profit margins, and keep in mind these profit margins are the same as the national margins. Those also vary year by year within a company. 10:17:36 10:17:38 10:17:42 10:17:44

It is those two differences that result in the slight difference; that's why we have identified it. 10:17:46 10:17:50 10:17:50

If, in fact, the market share for each company remains static throughout time and the profit margin for each company remains static throughout time, there would be no difference. 10:17:52 10:17:54 10:17:58 10:18:00

It is those two inputs which result in a difference when you look at profit margins based upon dollars and profit margins based upon units. 10:18:04 10:18:08 10:18:12

Q. Let me ask you a question. I do not believe that the profit margins have to stay static, they just need to stay the same nationally and within Minnesota. Because you assumed that, then that 10:18:20 10:18:24 10:18:26 10:18:30

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variable shouldn't matter; is that correct? 10:18:32

A. No, that's not correct. 10:18:34

Q. Why not? 10:18:34

A. Okay. Let's put Minnesota versus nationally aside for a second. Let's say we did the same 10:18:36 10:18:40

calculation, regardless of whether or not it's Minnesota, and we did it based upon unit volume. 10:18:44 10:18:46

When I say static -- I mean, it's your word -- meaning level over time, if the profit margin by company remains the same year after year after year after year and the market share remains the same year after year after year after year, the results will be the same. 10:18:48 10:18:50 10:18:54 10:19:00 10:19:04 10:19:06

Q. But for purposes of this analysis, you are assuming that it's the same profit margin in Minnesota as it is nationally? 10:19:08 10:19:12 10:19:14

A. That is correct. 10:19:14

Q. So the only difference between the two is that you have operating within Minnesota changes in market share? 10:19:18 10:19:20 10:19:22

A. As market share changes nationally. It's the same assumption; we are using the same profit margin in Minnesota as we are nationally, we are using the same market share in Minnesota as we are nationally. 10:19:28 10:19:32 10:19:34 10:19:36 10:19:40

The difference that's causing this variance between unit volume and revenue volume is 10:19:42 10:19:46

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the fact that the profit margin by company will vary 10:19:50
from year to year and market share by company will 10:19:54
vary year to year, regardless of the fact that it's 10:19:58

in Minnesota. 10:19:58
Q. If you could turn then to page 16. 10:20:16
A. Yes. 10:20:16
Q. Here the relationship between the total retail sales 10:20:32
and the wholesale sales is the multiplication of 10:20:34
total retail sales times your average retail margin, 10:20:36
resulting in wholesale sales? 10:20:38
A. Yes. 10:20:38
Q. Were there any other calculations that went into 10:20:42
this page? 10:20:42
A. Adding across year by year. This is actually 10:20:50
drawing the -- page 16 is actually drawing the 10:20:52
actual data from the exhibit volume and so there is 10:20:56
another step that's in there, which is identified in 10:21:00
the exhibit volume. It's merely identifying year by 10:21:04
year by year by year. 10:21:04
Q. Was this all done by a computer or was this done by 10:21:10
one of your assistants by hand? 10:21:12
A. It was done collectively by myself and my 10:21:14
assistants, but the actual calculations were done by 10:21:20
a computer, yes. 10:21:22
Q. Do you recall what program you used? 10:21:24
A. It was either Lotus or Excel. 10:21:28
Q. And do you know if any of the three people you 10:21:30
listed as assistants kept notes during this process? 10:21:36

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A. I am not aware if they did. 10:21:38
Q. Who is it who defined the particular manner in which this information is presented? 10:21:50 10:21:52
A. I did. 10:21:52
Q. And how did you come up with that? 10:21:56
A. To me it represents a logical thought pattern of starting from the big picture and working down; starting globally, going nationally, going to Minnesota. 10:22:02 10:22:04 10:22:08 10:22:08
Also, starting with the raw data from the companies, looking at revenues, looking at profitability, gathering market share, gathering all the pieces, and basically bringing them together in the total picture. And you are working down consistently, logically, step by step by step, to the Minnesota marketplace and the Minnesota profitability. 10:22:12 10:22:14 10:22:18 10:22:24 10:22:26 10:22:30 10:22:32 10:22:34
Q. Have you been provided any materials prepared by any other experts in this case? 10:22:40 10:22:40
A. No, sir. 10:22:42
Q. Do you know what damages the plaintiffs are claiming in this case? 10:22:48 10:22:48
A. No. 10:22:50
Q. Have you done any analysis of how the claimed damages relate to your analysis of profitability? 10:22:56 10:23:00

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A. I'm sorry. Would you repeat that? 10:23:02
Q. Have you done any analysis of how the damages claimed by the plaintiffs relate to your profitability numbers? 10:23:06 10:23:08 10:23:10
A. I don't know what the damages are the plaintiffs are claiming here. 10:23:12 10:23:12
Q. Do you expect to make such an analysis in the future? 10:23:18 10:23:18
A. I have not been asked to do so, no, sir. 10:23:22
Q. Let's then go to page 18. What were you trying to do with this page? 10:23:44 10:23:46
A. At the bottom of page 18 you see the conclusion from my analysis of a billion 850. There was available information as well to confirm the validity of the billion 850. 10:23:54 10:24:02 10:24:12 10:24:14
One is we had available and could calculate -- had available information and could calculate a cross-check based upon retail volume in dollars, and we also had available information to allow us to cross-check based upon unit volume. And this page identifies those cross-checks and shows the data and it shows the results. 10:24:18 10:24:22 10:24:28 10:24:32 10:24:40 10:24:44 10:24:48
Q. The bottom category, you say, is your number. Let's take the calculated Minnesota profit number that you referred to just a minute ago. 10:24:58 10:25:02 10:25:04

A. The billion 850? 10:25:06

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Q. Right. You say it's based on calculations as detailed in the Minnesota analysis. I take it that is tab 4A that we looked at a little while ago? 10:25:10 10:25:14 10:25:18

A. That is correct. It's at the bottom of page 4 of tab 4A. 10:25:24 10:25:28

Q. And this total U.S. profits number, where do we find that? 10:25:42 10:25:42

A. If you take the summation of the financial data company by company, it will be there. 10:25:50 10:25:52

Q. So that's simply just going through the six companies here and pulling out the -- U.S. profits, is that domestic tobacco profits? 10:25:54 10:26:00 10:26:02

A. Yes. 10:26:02

Q. So just summing up six companies, however many years it is, and that's the number we would come up with? 10:26:08 10:26:10

A. Yes. 10:26:12

Q. In your other assignments for other clients that you have been asked to do in terms of valuation, is it typical that you are asked to make calculations similar to this? 10:26:20 10:26:24 10:26:28 10:26:30

A. Generally, yes. What this is is basically a financial analysis of profitability and an allocation of that profitability. And I have been asked to do that before, yes, sir. It's what I do 10:26:34 10:26:36 10:26:38 10:26:42

regularly. 10:26:42

Q. Do you know why a company would come to you to perform this analysis as opposed to acquiring the 10:26:48 10:26:52

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financial reports itself and simply going through and adding up and making the necessary multiplications? 10:26:58 10:26:58 10:27:00

A. You are asking me why a company retained me for something that -- 10:27:04 10:27:04

Q. Is there something that you add to that analysis? 10:27:08

A. It's what I do every day. I am a financial analyst. I have been doing this for 25 years. I've had other companies come to me, even accounting firms come to me, to have me determine and allocate profitability and value. 10:27:12 10:27:16 10:27:20 10:27:22 10:27:26

Q. You've mentioned that you ran into instances in which either the tobacco numbers weren't broken out between domestic and global or other instances where you had to do some allocation. 10:27:36 10:27:40 10:27:44 10:27:50

A. Wrong. 10:27:50

Q. Okay. I apologize. 10:27:52

MR. MANNING: Is there a question? 10:27:56

A. I believe there is a statement. 10:27:58

Q. Have you not had to do that in coming up with this analysis? 10:28:02 10:28:02

A. We have taken numbers as reported, for example, in profitability and we have attempted to minimize any attempts to allocate. We typically have taken them as reported. 10:28:06 10:28:14 10:28:18 10:28:18

Q. In terms of applying your professional judgment in coming up with this report, where are the areas where you've had to apply your expertise? 10:28:22 10:28:28 10:28:30

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A. My expertise is financial analysis, and this entire report is such an analysis. We are -- basically we are taking individual pieces and taking information provided, enter it through this analysis and you can derive profitability. The overall analysis is my expertise, although I am relying upon information that's publicly reported and was provided to me. 10:28:48 10:28:56 10:29:00 10:29:10 10:29:14 10:29:18 10:29:22

Q. Let's go forward, then, to the section on page 19. 10:29:38

A. Yes. 10:29:38

Q. It's entitled "Pharmaceuticals and Consumer Products." 10:29:40 10:29:42

A. Yes. 10:29:42

Q. Is the following section here your analysis of relative profitability between the tobacco industry and these companies, or is this the basis for that analysis? 10:29:48 10:29:50 10:30:00 10:30:02

A. This is a step. The basis for the analysis is information publicly reported. Pages 19 through 24 merely identify profitability for three decades for 10:30:04 10:30:10 10:30:14

those other industries. And then on page 25 there is a summary, and 26. And 27 is observations. 10:30:18 10:30:28

Q. And this analysis is -- the information that you got is what came out of your review of the documents in 2008? 10:30:38 10:30:42 10:30:44

A. For the nontobacco companies, yes. 10:30:56

Q. And in terms of coming up with this information -- let's just take page 20, branded foods. This is a 10:31:00 10:31:08

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composite operating profit margin that you are showing here? 10:31:10 10:31:12

A. Yes. 10:31:12

Q. Do you know whether you calculated this using a unit volume or a revenue number? 10:31:14 10:31:16

A. This would be based upon revenue. 10:31:18

Q. And would you have calculated it the same way for the industries listed here as you did for the tobacco industry? 10:31:24 10:31:28 10:31:30

A. Yes. 10:31:30

Q. And were you faced with any allocation questions or problems in coming up with these numbers? 10:31:36 10:31:38

A. Yes. 10:31:38

Q. And what were those? 10:31:40

A. The allocation of corporate overhead. 10:31:44

Q. And let's go back, then, to page -- actually, in 2011, the page after the table of contents. 10:31:54 10:32:02

A. Yes. 10:32:04

Q. You explain here how you deal with unallocated corporate expenses. Did you use these same assumptions with regard to the nontobacco industries? 10:32:14 10:32:18 10:32:20 10:32:20

A. The nontobacco industries are shown on the next page. I believe you are reading the front page, which deals with domestic and international tobacco, global tobacco. The nontobacco segments are identified on the following page, and they are the same decision rules. 10:32:24 10:32:26 10:32:30 10:32:32 10:32:36 10:32:38

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Q. And so these are the allocation assumptions you used in -- 10:32:44 10:32:46
A. These are the ways that we either reported before or after corporate overhead. We didn't allocate corporate overhead, which is basically what these say. 10:32:52 10:32:54 10:32:58 10:32:58
Q. Was there anything else that you had to allocate or issues you had to deal with in coming up with these nontobacco analyses? 10:33:04 10:33:06 10:33:06
A. No. We took the information as reported by each individual company by year. 10:33:10 10:33:12
Q. Now, is there a reason you didn't look at it over the same time period, in other words, going back into the mid '50s? 10:33:16 10:33:18 10:33:20

A. Yes. 10:33:20
Q. Why is that? 10:33:20
A. Limited information available and also -- in terms of just raw data, raw information. Also, keep in mind that segment reporting didn't start until the '70s. 10:33:26 10:33:30 10:33:32 10:33:34
Q. And can you explain what you mean by "segment reporting"? 10:33:38 10:33:38
A. Prior to the 1970s frequently it was their choice whether or not to report revenues and profitability by business segment. And in the 1970s the Financial Accounting Standard Board came out and said report by segment. 10:33:44 10:33:48 10:33:54 10:33:58 10:34:00

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14 Q. Now, focusing again just on page 20, you list here 10:34:08
15 for each of these decades which companies you looked 10:34:12
16 at. Can you explain how you picked those companies? 10:34:16
17 A. Sure. In all these, whether we are looking at 10:34:24
18 branded food, alcoholic beverages, consumer 10:34:26
19 products, or branded nonalcoholic drinks, the first 10:34:32
20 thing is if one of the tobacco companies owned a 10:34:36
21 nontobacco segment in one of those four categories, 10:34:40
22 it would be included. After that we attempted to 10:34:46
23 identify a cross section of companies that were 10:34:52
24 involved in that industry as illustrative. 10:34:58
25 Q. Can you explain what you mean by "a cross section"? 10:35:04

1 Let's just take the branded foods. What does a 10:35:06
2 cross section of branded foods mean? Do you mean 10:35:10
3 you have to have drinks, starch, something else? 10:35:12
4 A. No.
5 Q. Or how does that work? 10:35:14
6 A. The drinks come later in terms of alcoholic 10:35:18
7 beverages and nonalcoholic drinks. 10:35:22
8 Here we are merely identifying companies 10:35:24
9 which are substantial companies in branded food 10:35:30
10 products, and basically these are companies that 10:35:34
11 were substantial companies over that time period 10:35:40
12 that I was aware of. 10:35:40
13 And basically we identified these as 10:35:46
14 companies that would probably be a representative 10:35:48
15 cross section of those involved in that industry in 10:35:52
16 order to examine relative profitability. 10:35:54

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17 Q. And why did you do an analysis of relative 10:35:58
18 profitability? 10:36:00
19 A. Because we were asked to do such an analysis of 10:36:02
20 relative profitability. 10:36:04
21 Q. And who asked you to do that? 10:36:14
22 A. Michael Ciresi. 10:36:20
23 Q. Let's go then to page 25. 10:36:52
24 A. Okay. 10:36:52
25 Q. What is your conclusion as you compare these 10:37:04

1 industries on operating profits? Do you have an 10:37:08
2 opinion on it other than just what the numerical 10:37:14
3 relationship is between them? 10:37:14
4 A. The latter is my opinion. 10:37:18
5 Q. The numerical relationship? 10:37:24
6 A. Yes. It merely identifies that, for example, in the 10:37:26
7 '70s pharmaceutical operating profitability was 10:37:28
8 23 percent versus tobacco at 20 percent versus the 10:37:30
9 others at -- alcoholic beverages at 10 percent, 10:37:32
10 nonalcoholic drinks at 16 percent, branded food at 10:37:34
11 9 percent, consumer products at 11 percent; that's 10:37:38
12 it. 10:37:38
13 Q. Do you have any opinion on what it means for an 10:37:44
14 industry to have a profit margin at any particular 10:37:46
15 percentage? 10:37:48
16 A. I guess I am trying to understand your question. 10:38:00
17 Q. Let me give you an example. If I told you I have an 10:38:02
18 industry that has a profit margin of 15 percent, 10:38:06

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does that mean anything to you in your financial analysis? 10:38:10

A. By itself? 10:38:12

Q. By itself. 10:38:12

A. By itself it means that you have a company -- industry that has a profit margin of 15 percent, period. 10:38:14 10:38:18 10:38:18

Q. That's it? 10:38:18

A. That's it. 10:38:20

Q. With regard to -- let's pick nonalcoholic beverages, 1970 to 1979. Do you have any opinions about that industry for that period other than it having an operating profit margin of 16 percent, if I read it correctly? 10:38:24 10:38:30 10:38:32 10:38:36 10:38:36

A. You said '70 to '79? 10:38:40

Q. Yes. 10:38:40

A. The profit margin was 16 percent, period. 10:38:42

Q. And do you have any other opinions about that industry for that time period? 10:38:44 10:38:46

A. No. 10:38:48

Q. Now on page 27 you have a page entitled "Observations." Let's take the second one where it says, "Tobacco operating profit margins are similar to those of pharmaceutical companies." 10:39:02 10:39:10 10:39:12 10:39:16

MR. MOCCIO: It says "exceed." 10:39:20

MR. ATKESON: No. I'm looking at the second one. 10:39:24 10:39:24

MR. MOCCIO: Oh, I'm sorry. Excuse me. 10:39:28

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BY MR. ATKESON:

Q. Do you see that? 10:39:28

A. Yes. 10:39:28

Q. Is that conclusion based on the chart we see on 10:39:34

page 26? 10:39:34

A. Yes, as well as the charts you see on page 25 -- 10:39:46

they are the same information -- as well as the 10:39:50

backup data that was the basis for such an analysis. 10:39:56

Q. And do you have any opinion in this case about 10:40:00

similarities or dissimilarities between the tobacco 10:40:02

companies and pharmaceutical companies other than 10:40:06

this operating profit analysis? 10:40:12

A. No. 10:40:12

Q. And do you have any opinions in this case regarding 10:40:16

the relationship of tobacco to any of the other 10:40:18

industries that you looked at other than a numerical 10:40:22

comparison of their operating profit margins? 10:40:24

A. No. 10:40:28

Q. Let's then go to page -- 28 is a section entitled 10:40:46

"Defendant Company Summaries." 10:40:48

A. Before you do, can I take a 30-second walk down the 10:40:52

hall? 10:40:54

Q. Of course. 10:40:56

(Break taken.) 10:46:22

BY MR. ATKESON:

Q. Before we get into the individual defendant company 10:46:32

summaries, in terms of the way you have done this 10:46:34

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analysis, the only specific Minnesota numbers that you used were the unit sales in Minnesota and the

price per pack in Minnesota; is that correct?

A. Yes.

Q. So that if we wanted to duplicate your analysis for any other state, we would just have to substitute in those two categories of numbers and we would be able to come up with a financial analysis for the same issues in that state; is that correct?

A. Yes.

Q. Have you been asked by any of the other states' attorney generals to do this analysis in their states?

A. No.

Q. Let's go then to page 29, which is the first page for American Tobacco in this domestic summary for -- sorry, defendant company summary. How is the first bullet point relevant to your analysis?

A. Merely as background.

Q. And how about the second bullet point?

A. Background.

Q. Let's then flip over to page 30. Is this background as well?

A. Yes.

Q. Is this also part of the basis for an analysis that diversification began sometime in the '60s?

A. It illustrates the growth and the diversification

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that has occurred since the '60s, yes. 10:48:58
Q. How did you come to the conclusion earlier that 10:49:00
diversification started in the '60s? 10:49:04
A. Because basically what you see are the substantial 10:49:06
acquisitions following the '60s. 10:49:10
Q. And that's reflected in each of these summaries that 10:49:14
we are going to be going through? 10:49:16
A. Yes, sir. 10:49:16
Q. Do you list each of the acquisitions or just the 10:49:18
major ones? 10:49:20
A. The major ones. 10:49:20
Q. And if we could look at page 31. Now, again, if you 10:49:32
recall our initial discussion about American 10:49:34
Tobacco, we had to add together two different sheets 10:49:36
to come up with the total numbers. Is that the 10:49:40
same -- is the same true for this page? 10:49:44
A. Yes. And as a result, the aggregate results under 10:49:46
the bullet should be identified as '54 to '96, not 10:49:52
'94. And the chart on the bottom, instead of 10:49:56
saying '90 to '94, it should say '90 to '96. 10:50:04
Q. And can you just point out to me in 2011 where the 10:50:10
extra numbers come from? I know where the first set 10:50:14
comes from. 10:50:14
A. All right. 10:50:28
Q. The first set we have got at tab 1A? 10:50:32

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A. That is correct, page 4. And then go to American Brands in tab 3A, page 3. 10:50:52 10:51:02

Q. Which is the segment analysis? 10:51:04

A. Yes. And you will see the total revenue that I have identified on page 31 as 149.6. And the inputs to that calculation are from American Tobacco, tab 1A, page 4, where it identifies global tobacco at 136,296. Do you see that? 10:51:10 10:51:16 10:51:22 10:51:24 10:51:32

Q. Just one second here. 136,296, yes. 10:51:36

A. Yes. And then if you go to American Brands, tab 3A, page 3, and add to that international tobacco or tobacco products, which are the same, and you add the 6,436 and the 6,862 for '95 and '96, that will add to 149.6. 10:51:38 10:51:48 10:51:50 10:51:56 10:52:00

Q. Okay. Thank you. 10:52:02

A. Yes, sir. 10:52:02

Q. Then if we go to page 32, the bottom half of this, at least, is just a chart representation of the numbers that are contained in 2011? 10:52:14 10:52:18 10:52:22

A. Yes. 10:52:22

Q. And on page 33, I take it that the dates here should be '54 to '96; is that correct? 10:52:38 10:52:42

A. Here -- well, let's see. I believe that's correct. 10:52:52

Q. Could we just -- 10:53:06

A. Actually, I think that -- no, let's go back to 10:53:08

this. Here in the first two pages we are identifying -- on page 31 we are merely identifying 10:53:14 10:53:26

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all of American Tobacco, the American Tobacco business and its brands basically. 10:53:28 10:53:30

As we move back into the charts on page 33, I think here we have not included the international operations of the remaining -- the remaining international operations owned by American Brands, I think at this point this is just American Tobacco. 10:53:34 10:53:38 10:53:42 10:53:44 10:53:46 10:53:46

Q. Okay. If you could turn then to page 5 of tab 1A in 2011; page 5. You are on 4, I believe. 10:53:50 10:53:58

A. Okay. 10:53:58

Q. Do you see the global tobacco number for '90 to '96 of 39 -- is that billion, million, whatever it is? 10:54:02 10:54:08

A. Yes. 10:54:08

Q. How is that reflected in this chart? 10:54:16

A. I believe that the 39 billion -- 39.5 billion is reflected in the chart for '90 to '94. Because if you go back to the chart on page 4, you will see the global tobacco stops -- well, all of it stops in '95, '96. 10:55:06 10:55:12 10:55:16 10:55:20 10:55:22

Also keep in mind that these charts are based upon linking points in time optically. That's different from year by year, and that may be part of 10:55:24 10:55:30 10:55:34

the question. 10:55:34

Q. Well, you are showing that the point in time for '90 to '94 -- and whether it's '90 to '94 or '90 to '96 -- that the total is somewhere over 10:55:38 10:55:42 10:55:46

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90 billion, I assume. That's what the chart shows, isn't it? 10:55:50 10:55:50

A. Yes. 10:55:52

Q. Can you find the 90 billion number in your backup? 10:55:56

A. Okay. It does include American Brands. If you go to American Brands, tab 3A, page 4, '90 to '96, at the bottom, consolidated segments, you will see 92,263,000,000. So what you are seeing here is the total company contribution. Okay? 10:56:42 10:57:04 10:57:12 10:57:16 10:57:18

Q. Okay. But that's not global tobacco, then? 10:57:20

A. It would be -- that's global. Keep in mind that the green is nontobacco. And if you look at the tobacco products on that same chart, move up, it's 52,850,000,000. And you will see the blue, which is tobacco, for '90 to '96 is just over 50 billion. 10:57:24 10:57:28 10:57:30 10:57:36 10:57:40

Q. Well, then the chart is mislabeled, I believe, or it's not comparable to charts further back in here. 10:57:46 10:57:58

A. It is -- I believe you are correct in terms of the '54 to '96. Then that's correct. 10:58:00 10:58:04

Q. So you have to add in the consolidated segments for American Tobacco to get those numbers, all right. 10:58:06 10:58:10

And the same would be true for operating profits? 10:58:12

A. Yes. 10:58:12

Q. Now, on page 34 you present a comparison of American Tobacco's global tobacco -- well, let me step back a second; let me figure this out. The other industries that you are presenting here, alcoholic beverages, nonalcoholic drinks, branded foods, and 10:58:26 10:58:32 10:58:32 10:58:34 10:58:38

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consumer products, are those domestic? 10:58:40
A. No, those are global. 10:58:40
Q. So this is meant to be a global comparison for both? 10:58:44
A. Correct. 10:58:46
Q. Did you do a domestic comparison for both? 10:58:50
A. No. When we looked at the other companies, we 10:58:52
looked purely on a global basis. 10:58:54
Q. Why did you not do domestic to domestic? 10:58:58
A. Because we wanted to look at the profitability of 10:59:00
the business of tobacco versus the profitability of 10:59:04
the business of consumer products, of alcoholic 10:59:06
beverages, nonalcoholic beverages as a business. 10:59:10
Q. It is true, is it not, that the operating profit 10:59:14
margins in tobacco are different, domestic versus 10:59:20
international? 10:59:20
A. At times, yes. 10:59:24
Q. Were you not interested in capturing that difference 10:59:30
or as you made this -- were you not interested in 10:59:34

capturing that difference in terms of your analysis 10:59:36
when you were comparing to other industries? 10:59:40
A. I was only interested in looking at the business 10:59:42
operations, the profitability of those business 10:59:44
operations, on a global basis. This is not part of 10:59:48
the Minnesota tobacco analysis; it's merely a 10:59:50
comparison of one business's profitability versus 10:59:52
another business's profitability. 10:59:54
Q. Did you make any Minnesota-specific analysis for 11:00:00

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American Tobacco as it relates to profitability 11:00:04
relative to other companies? 11:00:06
A. Not relative to other companies. The only 11:00:08
Minnesota-specific American Tobacco analysis goes 11:00:12
into the Minnesota profitability analysis. 11:00:16
Q. And I assume the same is true of the other 11:00:18
defendants in the case, that you did not make a 11:00:22
specific Minnesota analysis of profitability 11:00:28
relative to other industries, but only you looked at 11:00:30
the global industry for each of them? 11:00:32
A. That's correct, I only looked at Minnesota in the 11:00:34
context of our Minnesota profitability analysis, but 11:00:36
not on a comparative basis to nontobacco. 11:00:38
Q. Now, in terms of your analysis, then you go on to 11:00:54
Brown & Williamson, Lorillard, Liggett, Philip 11:00:58
Morris, and Reynolds. Is your presentation and your 11:01:02

analysis the same in each of these as it was with 11:01:04
American Tobacco? 11:01:06
A. Generally, yes. 11:01:08
Q. Can you highlight the differences? 11:01:12
A. Well, for example, you will notice -- if you flip 11:01:26
ahead to page 46, here we say, "Liggett's historical 11:01:36
profitability," we haven't used the word "global." 11:01:38
That's because in the '70s Liggett divested their 11:01:44
international operation and their global 11:01:44
profitability is their domestic profitability, so we 11:01:46
just said profitability. 11:01:48
Q. But you still used, in making that comparison, 11:01:50

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global numbers for the other companies -- 11:01:52
A. Yes. 11:01:54
Q. -- Pepsico and -- 11:01:54
A. We are looking at Liggett's global, although it's -- 11:01:56
Q. It's only domestic?
A. We are looking at their global business in tobacco 11:02:02
versus other businesses globally as well. So those 11:02:08
would be the types of differences. 11:02:08
Q. Can you look at page 39 and can you help -- or can 11:02:42
you identify for the '80 to '89 numbers where the 11:02:46
numbers on this chart come from? It appears that, 11:02:52
for instance, the total is around 320 or something 11:02:54
like that. 11:04:26

A. Keep in mind this is for BAT. I believe on this 11:04:32
particular chart you have to include more than 11:04:34
Brown & Williamson, because here Brown & Williamson 11:04:42
is a subsidiary of BAT and I believe you have to 11:04:44
include the other BAT tobacco operations. 11:04:50
Q. Well -- 11:04:50
A. And I believe -- I would have to get back to you 11:04:54
specifically on that number for that period. 11:04:56
Q. Well, can you turn to the Brown & Williamson tab? 11:05:00
A. Okay. 11:05:00
Q. And look at page 5. 11:05:04
A. Correct, I have got it here. 11:05:04
Q. I am just -- which number are you saying I should be 11:05:26
looking at in terms of figuring out where either the 11:05:28

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green or the blue lines are, or dots? 11:05:32

A. We are in '80 to '89. And what we see is BAT global 11:05:40
tobacco, for example, is just over 100. And if you 11:05:44
look on page 5 for '80 to '89, it's 105. Have you 11:05:52
got that? 11:05:52

Q. Yes. 11:05:54

A. So we can identify the blue. 11:05:54

Q. Okay. How about the green? 11:05:56

A. Here's the -- the other question is the consolidated 11:06:00
group is 218 in this chart, but as you point out, 11:06:06
it's just over 300 here. And that's where I have to 11:06:14

go back and double-check on that one. 11:06:14

Q. But you believe there is backup somewhere in here 11:06:16
for that number? 11:06:18

A. Yes, I do. But I have to get back to you on that 11:06:20
one. 11:06:20

Q. If we could look at page 40. 11:06:32

A. Okay. 11:06:32

Q. You state that "Brown & Williamson's global tobacco 11:06:34
historical profitability has proven to be greater 11:06:38
than most other branded consumer products." 11:06:40

Is the basis for that statement the chart 11:06:48
below and the financial data we have looked at which 11:06:52
shows that in 1979 -- '70 to '79 it was the second 11:07:00
highest profitability, in '80 to '89 it was the 11:07:04
highest, and in '90 to '96 it was the second 11:07:06
highest? 11:07:06

A. As a composite, yes. 11:07:10

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Q. And is there any other basis for that statement, other than what's in these exhibits? 11:07:12 11:07:14

A. No. 11:07:16

Q. If we could turn then to the chart on page 45. This is for Liggett? 11:07:34 11:07:36

A. Yes. 11:07:36

Q. Can you tell me where in the backup I can find the green for '80 to '89 revenue by decade? 11:07:40 11:07:46

A. Okay. If you will turn to Liggett, which is 1C, page 5. 11:08:14 11:08:20

Q. And I am looking at consolidated corporate group? 11:08:24

A. Correct. 11:08:24

Q. If you will look at the dot for -- if you look at the revenue number for 1970 to '79, it's 8,328,000,000? 11:08:30 11:08:32 11:08:36

A. Yes. 11:08:38

Q. And then for 80 to '89 it's a little higher, 8,462,000,000? 11:08:40 11:08:42

A. Right. 11:08:42

Q. But on the chart the relationship shows it going down over that time period? 11:08:44 11:08:46

A. Correct. 11:08:46

Q. Do you know why that is? 11:08:48

A. Yes. I believe what we have got here, it's a result of what I will call computer optics. For example, the 8,462 does conform for '80 to '89 -- page 5 does conform to the chart for '80 to '89. But also note 11:09:02 11:09:06 11:09:12 11:09:18

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that the consolidated group operating profits is negative for the years '90 to '96. 11:09:22 11:09:26

So let's look over at the right-hand chart. You will see that the green actually approaches zero, but optically the green is added onto the blue. So we are dealing with an optical -- 11:09:28 11:09:32 11:09:34 11:09:42

Q. This is a problem with the software package, not the analysis; is that what you're saying? 11:09:46

A. You have got the correct conclusion. 11:09:48

Q. Let me ask this question with regard to Liggett and then -- I will ask it, I guess, for Liggett, Philip Morris, Reynolds, and Lorillard, which are the remaining companies. 11:09:56 11:10:00 11:10:02 11:10:02

If we were to look at page 46 -- and you have got similar pages then for Lorillard, Philip Morris, Reynolds in which you compare profitability to these other industries -- is it true that the only basis for whatever conclusions you draw from there is what's reflected in the exhibits and on the chart that's on the particular page? 11:10:04 11:10:08 11:10:16 11:10:18 11:10:20 11:10:22 11:10:26

A. For Liggett the answer is yes. For Lorillard, which is page 52, the answer is yes. For Philip Morris, which is on page 59, yes. And for R.J. Reynolds, which is on page 66, yes. So yes. 11:10:34 11:10:40 11:10:52 11:10:56

Q. And, again, for each of those companies, if we wanted to find the backup for the charts, we would just simply go to the appendices, the exhibit here, and look at each of those individual company 11:11:28 11:11:32 11:11:38 11:11:40

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23 analyses under the first section? 11:11:46
24 A. Everything is in the exhibits file, which is 11:11:50
25 Exhibit 2011. 11:11:52

1 Q. In terms of those four companies, though, Liggett, 11:11:54
2 Lorillard, Philip Morris, and Reynolds, is there any 11:12:00
3 additional -- is there anything in the segment 11:12:00
4 analysis that needs to be added in to come to these 11:12:02
5 conclusions, similar to what we had in Brown & 11:12:06
6 Williamson and American Tobacco? 11:12:08
7 A. I don't think so. 11:12:10
8 Q. Now, with regard to all of your analyses on 11:12:34
9 profitability, I think we have discussed that it 11:12:40
10 includes three aspects. 11:12:46
11 One is the profitability of the six 11:12:48
12 companies themselves, and there you have broken it 11:12:54
13 down Minnesota, domestic, global. That's the first 11:12:58
14 set of analyses. 11:13:02
15 The second set of analyses is the relative 11:13:04
16 profitability of each of these six companies as 11:13:06
17 compared with four or five other global industries 11:13:10
18 in either the consumer products or pharmaceutical 11:13:14
19 field. 11:13:14
20 And the third set of analyses is this 11:13:20
21 diversification. I think you referred to it as how 11:13:24
22 the companies have used the money over time. 11:13:28
23 Are those the three sets of analyses that 11:13:30
24 are contained in 2010? 11:13:32

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A. Yes. 11:13:42

Q. Other than this comparison of research and development, youth prevention, that other report that we are going to talk about, do you have any opinions on any of those three areas, the six companies themselves, the relative profitability, or the diversification, which are not contained in 2010? 11:13:50 11:13:52 11:13:54 11:13:58 11:14:00 11:14:04 11:14:04

A. No. 11:14:08

Q. And are all of your opinions presented verbally or are some of them presented numerically? 11:14:24 11:14:36

A. I would say all of my opinions are in the report. For example, I can say that, for example, the billion 850 conclusion for Minnesota, that's numerical and it's also written out. 11:14:38 11:14:42 11:14:46 11:14:52

So all of my opinions -- this report is my opinion; it contains all of my opinions, "this report" being Exhibit 2010, accompanied by the exhibit volume, which is 2011, are my opinions on profitability. And my opinions on the R&D are in the other volume. 11:14:56 11:14:58 11:15:04 11:15:12 11:15:16 11:15:18

Q. Are you able to characterize how the profitability of the defendants compares to U.S. industries as a whole? 11:15:28 11:15:32 11:15:32

A. I have only prepared to identify the profitability as set forth in my analysis, which shows that 11:15:42 11:15:46

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vis-a-vis those other industries.

Q. Are you prepared to present any opinions on a qualitative comparison of the profitability of the tobacco companies to other U.S. industries other than the observations you have set forth in this report?

A. My opinions are as set forth in the report. I have --

Q. Let me just give you an example. I take it, then, you are not prepared to give an opinion that the tobacco industry is the most profitable industry in America or opinions along those lines?

A. I'm only going to be providing opinions based upon what's in my report.

Q. So you would say the five or six industries total that you have looked at, tobacco and these others, you can make comparisons among those five or six, but you wouldn't expand that further?

A. I haven't done that analysis, no, sir.

Q. And you don't plan to at this point?

A. At this point I have not been asked to.

MR. ATKESON: Let's go off the record for a minute.

(Discussion off the record.)

A. I identified one typo to you where we were

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identifying dates. 11:18:06

Q. Let's just be clear. That was on American Tobacco, when it should have been '90 to '96 as opposed to '90 to '94? 11:18:10 11:18:14 11:18:16

A. Correct. 11:18:16

Q. Okay.

A. If you go to page 43, you should strike the word "tobacco" in the first two of the three arrows. Where it says "total tobacco revenues," it should be "total revenues." Instead of -- the second arrow, where it says "total tobacco profits," it should be "total profits." 11:18:30 11:18:34 11:18:38 11:18:40 11:18:42 11:18:44

Q. So the first should be "total revenues" and the second should be "total profits"? 11:18:48 11:18:50

A. That's correct. 11:18:50

Q. Okay. 11:18:52

A. Then if you'd go to the exhibit volume, go to American Tobacco, tab 1A, page 4. The lower right-hand corner of the box where it says "Minnesota operations," it should be 21.0 as opposed to 20.1. 11:19:08 11:19:22 11:19:26 11:19:30 11:19:38

And if you go to Brown & Williamson, which is the next tab, B, page 5 -- 11:19:40 11:19:54

Q. And this is of the U.S. dollar page? 11:19:58

A. Correct. Bottom of the page, for the years '54 to 11:20:02

'59 you see an operating margin that says 8.2 percent. That should be 3.1. 11:20:06 11:20:10

MR. MANNING: Let's go back to page 4, 11:20:18

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American Tobacco. 11:20:20

MR. ATKESON: It's the bottom number in the corner? 11:20:26

MR. MANNING: Yes. Go to page 5. Is that a change as well? 11:20:30

THE WITNESS: That should be -- yes, that should also be on page 5. 11:20:34

MR. MANNING: Please point that out. 11:20:36

A. On page 5 of the exhibit volume, tab 1A, at the bottom, for '54 to '96 the operating margin should be 21.0 as opposed to 20.1. 11:20:40

Q. Let me ask you, if it's not too much trouble, during the next break -- and if it is you can just say you couldn't find it -- but if you can find that number that relates to the one we were unable to find? 11:20:44

A. On BAT? 11:20:48

Q. Yes. If you can find that for '80 to '89 -- 11:20:54

A. Okay. 11:20:56

Q. -- that would be helpful. 11:21:00

MR. MANNING: Let me just also briefly go back to 2010, if you would. Go to page 31. This is one that you corrected from '54 to '96 instead of 11:21:04

'54 to '94 in two places, right? 11:21:10

THE WITNESS: That is correct. I identified that earlier. 11:21:12

MR. MANNING: Did you do the same on 32 and 33, or not? 11:21:14

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THE WITNESS: 32 is correct as is. And 33, I believe 33 we have to be -- because it's global, I think that should be '96 as we had previously discussed. 11:22:00 11:22:04 11:22:06 11:22:08

MR. MANNING: On the left, revenue by decade? 11:22:12 11:22:12

THE WITNESS: Should be '54 to '96. 11:22:14

BY MR. ATKESON:

Q. And then at the bottom, the headings on each of the points should be 1990 to '96? 11:22:18 11:22:22

A. That is correct. 11:22:32

Q. Anything else in these two documents you want to change or amend or anything? 11:22:34 11:22:36

A. No. 11:22:50

MR. ATKESON: We are now going to mark 2012 and 2013. 11:22:52 11:22:58

(Defendants' Exhibits 2012 and 2013 marked for identification.) 11:23:48

BY MR. ATKESON:

Q. Okay. Could you take a look at 2012 and see if you recognize it? 11:23:56 11:23:56

A. I do. 11:23:58

Q. And what is it? 11:23:58

A. This is our -- my report on advertising, R&D, and youth prevention expense as of June. 11:24:04 11:24:06

Q. Now, it came to pass that you amended this report; is that correct? 11:24:14 11:24:16

A. Yes. 11:24:16

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Q. And is the amended report 2013? 11:24:18
A. Yes. 11:24:22
Q. Why did you amend the report? 11:24:26
A. Based upon additional analysis on RJR in terms of R&D and also at the request to include graphical presentations of the results determined. 11:24:42 11:24:56 11:24:58
And the earlier report also identified R&D related solely to smoking and health, and the subsequent report focuses on R&D, period. 11:25:08 11:25:16 11:25:22
Q. What was the initial -- I'm sorry. What was the additional analysis you had to do as it relates to Reynolds? 11:25:28 11:25:30 11:25:32
A. In Reynolds' interrogatory response they identified R&D expenses, but it actually excluded from that information certain promotions, discounts, et cetera. In fact, let's just look at the footnote. 11:25:44 11:25:56 11:26:00 11:26:04 11:26:08

Q. Tell me which one we are looking at now. Is this your final? 11:26:10 11:26:10
A. This is the final. I am looking at footnote (h), which is in the back. 11:26:16 11:26:18
Basically, we had incomplete information on RJR from 1975 and thereafter. So what we ended up doing was going back and taking a look at the reports to the FDC and for each year, year by year, taking the total amount for advertising and marketing and promotion expenditures. 11:26:36 11:26:42 11:26:44 11:26:50 11:26:54 11:27:04

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We took the total amount as reported to 11:27:08
the FDC by the six companies, subtracted out the 11:27:14
advertising and promotion expenses by the other five 11:27:18
companies, took the result and attributed that to 11:27:22
RJR, and we included that in our analysis. 11:27:30
Q. Did you update any of the other companies' numbers? 11:27:36
A. Only in the context of doing the calculations to do 11:27:56
the pie charts. 11:27:58
Q. And who asked you to do the pie charts? 11:28:10
A. Robins, Miller -- Robins, Kaplan, Miller & Ciresi. 11:28:18
Q. Now, are all your sources for this initial report 11:28:26
and then the final here all reported in your 11:28:30
footnotes? 11:28:30
A. Yes. 11:28:34
Q. Did you take at face value the numbers that were 11:28:44

reported to you by the companies? 11:28:46
A. Yes. 11:28:50
Q. Do you know whether or not those numbers are 11:28:58
accurate? 11:28:58
A. I'm taking them at face value; I am assuming their 11:29:04
accuracy. 11:29:04
Q. Do you know whether or not they are complete? 11:29:06
A. Unless specified otherwise. 11:29:10
Q. So unless you said I don't think this is complete, 11:29:14
you are assuming they are complete? 11:29:14
A. Let me answer your question this way. Look at 11:29:20
footnote number (a). The category for (a) is R&D, 11:29:36
research and development, expenditures. But, for 11:29:40

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example, in Philip Morris it identifies the total operating expenses of the departments that funded R&D, including but not limited to research relating to smoking and health, at any time for the period '62 to '94. These figures represent total operating expenses for all activities and thus include expenditures not related to research. 11:29:44 11:29:46 11:29:52 11:29:56 11:29:58 11:30:00 11:30:04

So I took what was reported and accepted them on face value and made no judgment. 11:30:06 11:30:10

Q. Okay. Well, let me ask you a question. One of the categories you have got is advertising, marketing, and promotion expenditures? 11:30:14 11:30:18 11:30:20

A. Yes. 11:30:20

Q. Do you know if the numbers that you used in there include, for instance, salaries that are paid to sales reps? 11:30:22 11:30:26 11:30:28

A. No. What I have is the extent that it was reported as relating to advertising, marketing, promotion, and in some cases they may have added different categories, but it's exactly what was in the interrogatories provided. 11:30:36 11:30:44 11:30:48 11:30:54 11:30:54

Q. Does it matter to you what the internal makeup is of the numbers that were reported to you? 11:30:56 11:30:58

A. I guess I don't understand your question. 11:31:16

Q. Well, let's assume one company reported their marketing numbers that included their sales reps and another company didn't. 11:31:18 11:31:22 11:31:24

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16 A. Now I understand your question. 11:31:26
17 Q. Does that matter to you? 11:31:26
18 A. It matters to the point that I identified 11:31:32
19 specifically in the footnotes what was provided to 11:31:34
20 me. For example, in R&D, Brown & Williamson 11:31:38
21 identified R&D related to smoking and health. The 11:31:40
22 other companies identified R&D including 11:31:44
23 expenditures not related to R&D. 11:31:46
24 So to the extent that there is a potential 11:31:50
25 difference in classification, we have identified 11:31:52

1 those in the footnotes. 11:31:54
2 Q. To the extent you know of them? 11:31:56
3 A. Yes. 11:31:56
4 Q. But I guess I am asking: Do you know how each of 11:31:58
5 the numbers that were reported to you, what they 11:32:02
6 consist of? 11:32:02
7 A. Only to the extent that such information was 11:32:04
8 disclosed. 11:32:04
9 Q. So if the interrogatory answer just gave you a 11:32:10
10 number and didn't say how it was made up, you did 11:32:14
11 not probe any further to find out if it was made up 11:32:16
12 of six categories as opposed to five and compared it 11:32:20
13 to someone else's number? 11:32:20
14 A. I accepted what was provided as reported in the 11:32:24
15 interrogatory. 11:32:24
16 Q. And you didn't go further than that in looking at -- 11:32:28
17 A. No. 11:32:28
18 Q. In terms of the way this report is laid out, you 11:32:34

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make three groupings of companies. Is there any rhyme or reason to those groupings? 11:32:38 11:32:40

A. I would just say convenience to the tabs because you can fit, for example, two groups -- well, it's a matter of the convenience of the tabs really, primarily, yes. 11:32:44 11:33:02 11:33:06 11:33:10

Q. Previously you had at least started with the 11:33:14

companies alphabetically; here you have started with Philip Morris and Reynolds. Is there any reason to that? 11:33:16 11:33:20 11:33:20

A. It's also they are the two larger companies. 11:33:22

Q. Now, let's go back to the first time you understood you had to put together this kind of an analysis. Did you have any information already that was helpful to you in making this analysis? Did you start with anything, is what I am asking, that you already had? 11:33:34 11:33:38 11:33:40 11:33:48 11:33:50 11:33:52

A. No. It was based upon information provided to us by the companies through their interrogatory responses. 11:33:56 11:34:00

Q. And did you ask the Robins firm to get that information for you? 11:34:06 11:34:06

A. Yes. 11:34:08

Q. And what did you ask them to get? 11:34:08

A. Any information provided to them in response to these categories of R&D, et cetera. 11:34:14 11:34:20

Q. Well, did you come up with these categories? 11:34:22

A. No. 11:34:24

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21	Q.	Who did?	11:34:26
22	A.	The Robins firm.	11:34:30
23	Q.	Were there any categories that you suggested adding	11:34:34
24		to this list of categories?	11:34:36
25	A.	No.	11:34:38

1	Q.	One of the categories you have is CTR. Do you know	11:34:40
2		what CTR is?	11:34:42
3	A.	Council for Tobacco Research.	11:34:42
4	Q.	And do you know what they do?	11:34:44
5	A.	Yes.	11:34:46
6	Q.	What is your understanding that they do?	11:34:48
7	A.	Council for Tobacco Research is a not-for-profit	11:34:54
8		organization that conducts research studies and	11:35:00
9		provides such research studies to the public.	11:35:04
10	Q.	Now, in terms of coming up with the total number for	11:35:10
11		your comparison, you put research and development	11:35:14
12		expenditures together with contributions to CTR. Do	11:35:16
13		you see that?	11:35:18
14	A.	Excuse me. What page are you on?	11:35:20
15	Q.	Well, take any page.	11:35:22
16	A.	Okay.	11:35:22
17	Q.	You have a research and development expenditures	11:35:30
18		number. Do you see that?	11:35:32
19	A.	Yes.	11:35:32
20	Q.	And then you have a category for contributions to	11:35:34
21		CTR.	11:35:36
22	A.	Yes.	11:35:36
23	Q.	And then you add those two numbers together?	11:35:38

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A. Yes. 11:35:38
Q. Why do you do that? 11:35:40

A. Well, if you have got research and development and also the Council for Tobacco Research is conducting research and you are providing contributions to the Council for Tobacco Research to do such research, then it would be logical that, if you are trying to capture all the R&D, they would fit together. 11:35:42 11:35:46 11:35:50 11:35:54 11:35:56 11:36:00
Q. Is this something that the Robins firm asked you to do? 11:36:04 11:36:04
A. Yes, they asked me to do this analysis. 11:36:06
Q. No, but did they ask you to add those two numbers together? 11:36:08 11:36:08
A. I don't recall if they asked me to or to me it's just a logical grouping. 11:36:12 11:36:14
Q. Were there any other numbers that you thought should be included in the category of research and development that are not represented here? 11:36:16 11:36:20 11:36:20
A. No. 11:36:22
Q. Was there any information that you were given by either the plaintiffs themselves or from the defendants that you did not include in these charts that relates to research and development? 11:36:28 11:36:30 11:36:34 11:36:36
A. To the extent that there were any other documents that identified R&D, for example, if there was anything in an annual report, we went back to our decision rules. 11:36:48 11:36:52 11:36:54 11:36:54

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For example, just as in the profitability analysis, Philip Morris provided a summary of revenues, et cetera. That's the first item we would use and only then would we go to the annual reports. 11:37:00 11:37:04 11:37:08 11:37:12 11:37:12

Same thing here; to the extent we received it directly from the defendant companies, we used that and so we would not use any additional information. 11:37:14 11:37:18 11:37:20 11:37:20

Q. But is there any information that you had that you did not use where you didn't have a substitute number for? 11:37:24 11:37:28 11:37:28

A. No, other than as I just specified. To the extent we asked for the information and it was provided, we used it. 11:37:32 11:37:38 11:37:40

Q. Now, were you able to find any of the information that relates to research and development expenditures for any of the six companies from somewhere other than in a document the defendants provided to you through this litigation? 11:38:00 11:38:02 11:38:06 11:38:10 11:38:12

A. Would you repeat that? 11:38:18

Q. Let me come at it a different way. Do you recall going to any public sources for this information on research and development? 11:38:20 11:38:22 11:38:24

A. For R&D, no. But the only way to be sure is to go 11:38:30

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to the footnotes. I do remember going to the FDC report, for example, for advertising and promotion and marketing. But for R&D, I believe that it all came from the six companies and also information provided on the -- from the Council for Tobacco Research. 11:38:32 11:38:34 11:38:40 11:38:46 11:38:50 11:38:50

Q. Now, when you do your graphic representations, you are showing a relationship between certain categories to other categories; is that correct? 11:39:04 11:39:06 11:39:08

A. Yes. 11:39:10

Q. Do you have an understanding as to why you are making that presentation? 11:39:14 11:39:16

A. Yes. 11:39:18

Q. And what is that? 11:39:18

A. I was asked to compare those categories, for example, looking at R&D to sales or looking to one category versus another. 11:39:24 11:39:26 11:39:28

Q. Have there been other opportunities in your career where you have compared R&D to sales? 11:39:32 11:39:36

A. Sure. 11:39:36

Q. In what context have you done that? 11:39:40

A. In looking at a relative effort of research and development, frequently resources. It's a common calculation. 11:39:46 11:39:52 11:39:54

Q. Are there any industry benchmarks as to appropriate 11:39:58

ratios between sales and R&D? 11:40:02

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A. No. 11:40:04
Q. Do you have any opinions as to what are appropriate 11:40:10
ratios between sales and R&D? 11:40:12
A. No. They are what they are. 11:40:14
Q. Were you able to get all the information that you 11:40:26
wanted in terms of being able to make these 11:40:28
comparisons? 11:40:30
A. We took the information and used the information 11:40:36
provided. You will see that there is a lot of gaps 11:40:40
in the information provided. 11:40:42
So to the extent that additional 11:40:44
information can be provided, it would be -- you 11:40:54
would be able to fill those gaps and have a better 11:41:00
picture. 11:41:00
Q. Do you have any expectations at this point of 11:41:04
supplementing the report that you just did on 11:41:06
July 2nd? 11:41:08
A. If I am asked to do so, I will. 11:41:10
Q. But do you have any present expectation of doing 11:41:12
that? Is there more information you are waiting for 11:41:16
so that you can do another iteration of this? 11:41:18
A. At this point in time I have used all the 11:41:20
information that has been provided. And if 11:41:22
additional information is provided and I am asked to 11:41:26

update my analysis, I will. But at this point in 11:41:28
time, this document is complete. 11:41:32
Q. Have you told the plaintiffs that I need some other 11:41:34
piece of information to fill this out or anything? 11:41:38

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A. The gaps that are missing are identified and therefore it can be updated if there's additional information provided. 11:41:40 11:41:46 11:41:46

Q. But when we talked about your other report, you said that the one category of things that you wanted that you couldn't get would have been Minnesota-specific numbers, to begin with, as to Minnesota operating profits and the like. 11:41:50 11:41:52 11:41:54 11:41:56 11:41:58

A. Correct. 11:41:58

Q. I take it, then, there is no such category that exists -- the information you were looking for on the R&D report, there may be gaps within particular areas, but there is no category in which you couldn't get at least some information; is that right? 11:42:00 11:42:04 11:42:08 11:42:10 11:42:12 11:42:14

A. I would say the way to answer your question is fill the gaps no matter where they are. 11:42:16 11:42:18

Q. Now, are there any charts or graphs that you made that are not contained in this 2013? 11:42:28 11:42:32

A. No. 11:42:34

Q. Do you have both -- yeah, you have 12. If you could use both of the documents. 11:42:58 11:43:00

A. All right.

Q. If you could turn in 2012 to page 5, it's labeled page 5. It's page 5 of the second half, so it should be a page relating to Philip Morris, RJR, and Brown & Williamson. 11:43:20 11:43:24 11:43:30 11:43:30

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A. For advertising, R&D, and youth prevention, yes. 11:43:34
Q. Right. And it's got the various -- 11:43:34
A. Yes. 11:43:34
Q. It's each of the decades? 11:43:36
A. Right, with the blue arrows. 11:43:38
Q. Right. But I am looking at, actually, page 5, which 11:43:40
is the -- at least it's labeled page 5. Do you have 11:43:44
that? It's got each of the decades. 11:43:48
A. No. I am looking at years starting at '87. I think 11:43:52
you are looking at page 6. 11:43:56
Q. Well, it says page 5. It's dated May 29, '97 down 11:44:00
in the corner. This is the page (indicating). 11:44:04
A. Oh, okay. 11:44:06
MR. ATKESON: You can keep it. I have got 11:45:12
another copy. 11:45:14
(Discussion off the record.)
MR. MOCCIO: I think we are missing some 11:46:20
pages on ours and we will have to use yours. 11:46:24
A. May I see this again? I think I know what the 11:46:24

answer is. Okay. Mine is dated 5-30, yours is 11:46:54
dated 5-29. Because the reports were printed out on 11:46:56
two different days, they are two different dates. 11:47:00
Q. Are you aware -- you may not know the answer to 11:47:04
this. Is there any difference between those two 11:47:06
documents other than the pagination? 11:47:08
A. No. And it's not the pagination, it's the date. As 11:47:12
you know, when you are making color copies it takes 11:47:16
a long time. And when you are printing a number of 11:47:18

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copies, sometimes it takes more than one day. 11:47:28

And your copy that you have, I believe, 11:47:30

was printed on the 29th and this copy was printed on 11:47:32

the 30th; that's it. The numbers are the same. 11:47:34

MR. ATKESON: I guess just for 11:47:36

completeness sake, we will just mark -- let's mark 11:47:38

that as 2014. We will try to go back and forth, and 11:47:42

maybe you can keep that as a guide, too. 11:47:46

MR. MANNING: In your handwriting it has 11:47:48

2012. Do you want to put a formal marking on it? 11:47:54

MR. ATKESON: Oh, I am sorry. Here, we 11:47:54

can do this one. Give him this one and make it 11:47:54

2014.

(Defendants' Exhibit 2014

marked for identification.) 11:48:14

A. Okay. 11:48:16

Q. So if you could go to that page, which is the last 11:48:20

page -- or page 5 for Philip Morris, Reynolds, and 11:48:26

Williamson. 11:48:26

A. Where it identifies for '54 to '94 youth prevention 11:48:38

expenditures of 642,805, is that the page -- at the 11:48:40

bottom, is that the one that you want? It would be 11:48:44

the last page -- 11:48:46

Q. It's got each of the decades. 11:48:48

A. Correct. You are talking about for Philip Morris, 11:48:50

Reynolds, and Brown & Williamson? 11:48:52

Q. Brown & Williamson, yes. 11:48:54

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A. So it would be the last page prior to the footnotes? 11:48:56 11:48:58

Q. Yes. 11:48:58

A. Okay. 11:48:58

Q. Then if you would turn to -- the numbers are not paginated in 2013, but if you could turn to the -- 11:49:00 11:49:08

A. Do you want me to go to the other exhibit now, 213? 11:49:12

Q. No. 213 is the big one, it's your final. So if you keep that page open and go to the big one, go to the last page of Philip Morris, which is in tab A before you get to the -- 11:49:14 11:49:18 11:49:20 11:49:22

A. Right, I have got it. 11:49:24

Q. Okay. It should have the decades '54 to '59, '60 to '69, '70 to '79 across. Do you see that? 11:49:30 11:49:34

A. Yes. 11:49:34

Q. Now you and I are looking at different pages. 11:49:36

A. No. I have got it right here. 11:49:38

Q. Okay, great. Now, you will see that you have got more numbers filled in for Philip Morris here. For instance, in smoking and health related research, previously you had dashes, now you have got numbers filled in. Do you see that? 11:49:44 11:49:52 11:49:54 11:49:56 11:49:58

A. Correct. 11:49:58

Q. So I take it, then, you also got new numbers for Philip Morris between the original date -- the original report and this subsequent report? 11:50:02 11:50:06 11:50:08

A. No. I believe this goes back to -- in the first line of questioning of this you asked me what was 11:50:10 11:50:14

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different, and I identified that in the R&D area, at first, the R&D was focused on smoking and health related research as identified in Exhibit 2014. 11:50:16 11:50:20 11:50:24

And what we found is that only Brown & Williamson identified smoking and health related research, where the other companies identified research and development. 11:50:30 11:50:32 11:50:34 11:50:38

And so we were merely taking that information and -- the category has changed from the earlier version in June of smoking and health related research only to R&D; that's the only 11:50:38 11:50:46 11:50:48 11:50:52

difference there. 11:50:52

Q. So you had these numbers previously, you just didn't have them listed in the original report because you didn't think they fit the category? 11:50:54 11:50:58 11:51:00

A. At that point in time -- that's correct. It was a narrower category than just R&D. And the way the other companies answered it, it was this is our R&D, but for Brown & Williamson. 11:51:02 11:51:06 11:51:10 11:51:12

Q. There was no change in the methodology between the two reports; is that correct? 11:51:18 11:51:20

A. That is correct. 11:51:20

MR. MANNING: Counsel, I am going to need a restroom or a lunch break. 11:51:26 11:51:28

MR. ATKESON: That's fine. Why don't we take one now. 11:51:30 11:51:30

MR. MANNING: Let's do lunch.

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MR. ATKESON: Sure, that's fine.

(Lunch break.) 12:54:42

MR. ATKESON: Well, let's go back on. 12:54:46

BY MR. ATKESON:

Q. Where we left off we were talking about 12:54:50
Exhibits 2012, 13, and 14. Let's just focus -- 12:55:00

A. Wait a minute. I have got 13, 14. 12:55:02

Q. And then 12 is the smaller version. 12 is the 12:55:08
May 30th version. Just so -- if you want to have 12:55:12

all three, those are the grouping. 12:55:14

A. Okay. 12:55:16

Q. Let's focus in on just these categories again, the 12:55:22
ones we haven't had a chance to talk about. Let's 12:55:30
go to a specific page in 2013. The last page of 12:55:36
Philip Morris and Reynolds before you get to the -- 12:55:42
I don't know what this would be -- the Philip Morris 12:55:46
ratio page. 12:55:48

A. You're talking about the -- 12:55:50

Q. Decade by decade. 12:55:52

A. Yes. 12:55:52

Q. For RJR you have got a category entitled "Estimated 12:56:00
Advertising, Marketing, and Promotion Expenditures," 12:56:04
which at least for some years is the same as 12:56:08
advertising, marketing, and promotion and for other 12:56:10
years is different. 12:56:12

MR. MANNING: I'm sorry to interrupt you. 12:56:14
Did you say 2014? 12:56:16

MR. ATKESON: 13. 12:56:18

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MR. MANNING: I apologize. 12:56:20

BY MR. ATKESON:

Q. For instance, if you look at the '54 to '59 and '60 to '69 categories, the two numbers are the same. 12:56:24 12:56:26

A. Correct. 12:56:28

Q. But if you go to '70 to '79 they're somewhat 12:56:32

different, and '80 to '89 they are more than somewhat different, and the same is true for '90 to '94. Do you know what -- why those numbers aren't the same in those later decades? 12:56:36 12:56:38 12:56:46 12:56:48

A. Yes. 12:56:48

Q. And why is that? 12:56:50

A. The best way is to look at footnote number (h). Footnote number (h) basically identifies the methodology in terms of comparing the FDC reports with the four other companies and the differential being RJR. That was for information from 1975 and thereafter. 12:56:58 12:57:02 12:57:06 12:57:10 12:57:16 12:57:16

In our analysis in the -- starting where you look at the percentages, what you will see is whenever we look at advertising, marketing, and promotion, we do it both ways. 12:57:22 12:57:28 12:57:30 12:57:32

We don't add them together; these are not additive numbers. We either take the numbers as stated in the interrogatory or the numbers as stated in the interrogatory for the period 1954 to 1974 and then for 1975 through '94 is estimated based on 12:57:34 12:57:40 12:57:44 12:57:50 12:57:56

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analysis. So we are doing one or the other. 12:58:00
Q. And does that explain why the -- let me see if we 12:58:04
can get the nomenclature. What do you call this 12:58:06
page that follows it that has advertising, R&D, and 12:58:10

youth prevention by company? Is there something we 12:58:14
can use to just refer to that page, the ratio page 12:58:16
or -- 12:58:16
A. I think you can call it a numerical summary, because 12:58:20
what we have later is a graphical summary. 12:58:26
Q. Well, you will notice that if you compare the Philip 12:58:28
Morris and the R.J. Reynolds numerical summary, that 12:58:32
they are different in terms of layout. Do you see 12:58:36
that? 12:58:36
A. Yes. 12:58:36
Q. And is the only difference in the use of advertising 12:58:44
as stated and advertising as estimated, or are there 12:58:48
other differences between the two? 12:58:50
A. It would be the former, whereby if you just take 12:58:54
the -- there are more calculations with RJR because 12:59:00
we are doing it both as stated and as estimated. So 12:59:04
it would be the latter phrase that you used. 12:59:06
Q. Now, in terms of youth prevention expenditures, are 12:59:14
you aware of a similar category of costs in any 12:59:20
other industry? 12:59:22
A. No, I have not looked at that in any other industry; 12:59:42
I have only looked at it here. 12:59:44
Q. You make a comparison, when you do your ratios, 12:59:48
between youth prevention expenditures and 12:59:52

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advertising and marketing, for instance. 12:59:56

Have you made a comparison similar to that 01:00:00
with any other industry in the years you have been 01:00:04
working on valuations? 01:00:04
A. No. 01:00:08
Q. And was this done at the request of the plaintiffs? 01:00:14
A. Yes. 01:00:16
Q. Do you know whether or not the State spends any 01:00:36
money on youth prevention expenditures? By "State" 01:00:40
I mean the State of Minnesota. 01:00:40
A. I don't know. 01:00:42
Q. Do you know if -- are you aware of how much money 01:00:50
the State gets in any particular year from excise 01:00:54
taxes on cigarettes? 01:00:56
A. No. It's irrelevant to my analysis. 01:01:02
Q. You haven't done any study of that? 01:01:04
A. No. Again, it's not part of our analysis. It's 01:01:08
unnecessary to it. 01:01:10
Q. I take it, then, that you have not done any 01:01:12
comparison of how much money the State gets in 01:01:16
excise taxes versus whatever it spends on youth 01:01:18
prevention expenses? 01:01:24
A. I have not done that analysis, no. 01:01:26
Q. Was the methodology you used for each of the six 01:02:16
companies the same other than this differentiation 01:02:22
in R.J. Reynolds for advertising estimated and as 01:02:26

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stated numbers? 01:02:26
A. Yes. 01:02:30
Q. Why don't we go through one just so we can 01:02:36
understand exactly how it's done. Do you care which 01:02:40
one we pick? 01:02:40
A. It's your choice. 01:02:42
Q. Actually, let's pick American Tobacco, and I pick 01:02:56
this because it has the most number of colored lines 01:03:00
up at the top. So we are in tab 2. Can you explain 01:03:02
how all those colored lines on the first page work? 01:03:08
A. Sure. We can start with the very first colored 01:03:18
line, which is the orange one. 01:03:26
Conceptually in the interrogatories, what 01:03:30
you will see is -- responses to the 01:03:34
interrogatories -- is that the various companies 01:03:36
will identify that they have spent over a period of 01:03:40
time X dollars, but they may not spell out what they 01:03:46
spent year by year over that period of time. 01:03:48
So what the colored lines represent is an 01:03:52
identification of the time period identified by the 01:03:58
companies and the total dollars over that time 01:04:04
period as represented to us, and we did not make any 01:04:10
attempt to allocate those dollars year by year. 01:04:12
Q. So taking the orange line, then, this would indicate 01:04:16
that you got some interrogatory answer that 01:04:20

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indicated that between the period 1944 and 1984 American Tobacco spent $563,416 on some research and development related issue? 01:04:24 01:04:34 01:04:36

A. Yes. 01:04:38

Q. And in terms of, for instance, coming up with your decade-by-decade analysis, you are treating that 563,000 number as if it all occurred sometime in the 1980 decade? 01:04:44 01:04:50 01:04:54 01:04:56

A. No, I think that's incorrect. What we are doing is, let me refer you to -- with regard to American Tobacco, for example, we are treating those R&D expenditures as part of all of the R&D expenditures for the entire period relative to the domestic sales for that entire period as identified on the numerical summary page where we say R&D expenditures to total American Tobacco sales 1954 to 1994. 01:05:08 01:05:46 01:05:52 01:05:56 01:06:02 01:06:06 01:06:10 01:06:16

We are not allocating in that particular one any particular time period; we are looking at it over the entire time period, doing an apples-to-apples comparison of R&D over the entire time period to sales over the entire time period. 01:06:16 01:06:20 01:06:22 01:06:24 01:06:28

Q. If you'd go to the page right before that, which lists decade by decade whatever results. 01:06:30 01:06:38

A. Yes. 01:06:38

Q. Do you see that? 01:06:38

A. Yes. 01:06:38

Q. How did you treat it in terms of coming up with a 01:06:44

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decade-by-decade number? There you had to make some allocation. 01:06:50 01:06:50

A. We are merely -- in this example we are merely identifying that it was spent in a particular decade. 01:06:54 01:06:56 01:06:58

But for purposes of our analysis, the numerical analysis and the graphical analysis -- keep in mind the numbers identified in the earlier pages are only inputs. The analysis makes no such allocation to any particular decade; we are looking at it over the entire time period spent without an arbitrary allocation. 01:07:00 01:07:04 01:07:06 01:07:10 01:07:14 01:07:16 01:07:18

Q. And, again, the choice of the time period of 1954 to 1996 or '4, depending on which companies we are looking at, is something that you were asked to do by the Robins firm? 01:07:22 01:07:28 01:07:30 01:07:32

A. No. Let me illustrate with another one. 01:07:44

Q. Before you do that, let me just ask a question. 01:07:48

A. Sure. 01:07:48

Q. How did you come to the conclusion that you should start with 1954 as a starting date; did anybody tell you that or did you come up with that on your own? 01:07:50 01:07:54 01:07:56

A. We were asked to start everything with respect to 1954. 01:08:00 01:08:00

Q. I'm sorry. You can go to your illustration now. 01:08:04

A. Sure. You will see for American Tobacco, dropping down for the numerical analysis to youth prevention expenditures to total domestic tobacco sales, you 01:08:34 01:08:38 01:08:42

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will see two different time periods there; one is for 1983 to '94 and the next one is for 1954 to 1994. 01:08:46 01:08:50 01:08:52

Well, if you look back in the analysis for American Tobacco -- not the analysis, but the financial information, you will see under "Youth Prevention Expenditures" information provided for the years 1983, each and every single year, through 1994. 01:08:54 01:09:00 01:09:02 01:09:06 01:09:12 01:09:12

And so, therefore, the first basis of comparison is let's look at the years in which there were youth expenditures identified relative to sales in those same years. That's the apples-to-apples comparison, the first apples-to-apples comparison. 01:09:16 01:09:20 01:09:22 01:09:26 01:09:30

Secondly, if that same information is provided for the entire period, those are the only youth prevention expenditures for the entire time for 1954 to 1994, that's the basis for the second comparison. 01:09:36 01:09:40 01:09:44 01:09:48 01:09:48

So we are merely identifying for the years 01:09:50

the information is provided the relative comparison. 01:09:58

Q. Let's focus on that for a minute. Under "Youth Prevention Expenditures" you have two subcategories; one is youth prevention expenditures by itself, it appears, and the other is youth prevention expenditures through TI. Do you see that? 01:10:04 01:10:08 01:10:12 01:10:12 01:10:16

A. Yes. 01:10:16

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Q. What do you understand TI to be? 01:10:18
A. TI is for the Tobacco Institute, which is basically a trade association. 01:10:28
Q. And it indicates that your data for the TI numbers actually came from TI in footnote (e); is that correct? 01:10:32
A. In the aggregate, yes. The allocation was a mathematical calculation. 01:10:40
Q. How did you do that? 01:10:44
A. We can identify what each company contributed to the Tobacco Institute and we can also identify what the Tobacco Institute spent in the aggregate by year, and it is that proportional relationship which serves as a basis for the allocation of youth prevention expenditures through the Tobacco Institute by company. 01:10:48
Q. So, for example, if American Tobacco gave 20 percent of the annual funds to TI, you would assume that 01:10:54

20 percent of TI's annual expenditures on youth prevention are attributable to American Tobacco? 01:11:00
A. For that year. 01:11:16
Q. For that year? 01:11:16
A. That is correct. 01:11:20
Q. Now, if we go to the first item, which is youth prevention expenditures by itself, you have footnote (o) next to it. That indicates "No data provided," I will represent to you, but you can take a look. 01:11:22

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A. I think that's correct, but let me just go to the footnotes. Correct. 01:11:50 01:11:54

Q. So that means that you don't know whether American Tobacco spent any money of its own on youth prevention expenditures and they haven't told you that they have? 01:12:00 01:12:02 01:12:04 01:12:06

A. What that means is I know that they have provided no data on whether or not -- they have provided no data on that category for those years. 01:12:12 01:12:18 01:12:20

Q. But I take it they have also not told you that we spent zero dollars; otherwise you would have stuck in zero all the way around, right? 01:12:22 01:12:24 01:12:26

A. Correct. 01:12:28

Q. So in terms of this being a complete analysis in terms of information, all you can say at this point 01:12:32 01:12:38

is you can compare what American Tobacco spent through TI on youth prevention expenditures to other categories, but you don't know what they spent completely on youth prevention expenditures and therefore you can't compare it to anything else? 01:12:40 01:12:44 01:12:48 01:12:52 01:12:54

A. Let me make sure I understand your question, because it's a long question. 01:13:04 01:13:04

Q. Sure. 01:13:06

A. What I understand from your question is that you are asking me that if I was provided more information over more years might I do a different comparison relative to sales for those years, I believe, in 01:13:10 01:13:16 01:13:18 01:13:24

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terms of saying, instead of looking at '83 to '94, to the extent that there were any youth prevention programs in earlier years where dollars were spent -- for example, going back to 1980, then I would be comparing '80 to '94 for youth prevention expenditures and '80 to '94 for sales, that's what I would be doing. 01:13:28 01:13:30 01:13:34 01:13:38 01:13:44 01:13:46 01:13:46

But just as, for example, there's a substantive -- we were talking before about the differences between the July report and the earlier report. There was more information provided, which is allowing more of the holes to be filled. 01:13:48 01:13:50 01:13:54 01:13:58 01:14:02

So what you have got here is -- before we were talking about differences between the reports. And not only are there the substantive differences in terms of additional analysis, but you will note that there are fewer gaps in the later report than there are in the earlier report, because there is more information provided. 01:14:04 01:14:08 01:14:12 01:14:14 01:14:16 01:14:20 01:14:22

So if the companies -- the tobacco companies would provide more information, then we could do more comparisons. 01:14:24 01:14:26 01:14:28

Q. Okay. Let's just follow that one step further. 01:14:32

A. Okay. 01:14:32

Q. Can you look at -- keep your hand on any page out of American Tobacco that you need and also look at the numerical summary for American Tobacco. 01:14:36 01:14:40 01:14:44

A. Okay. 01:14:46

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16 Q. There when you talk about your expenditure 01:14:48
17 comparison, when you talk about youth prevention 01:14:52
18 expenditures you don't qualify it by saying youth 01:14:54
19 prevention expenditures through TI, you're just 01:14:58
20 talking about the category youth prevention 01:15:02
21 expenditures, although you recognize that you have 01:15:04
22 no data for youth prevention expenditures by the 01:15:08
23 company itself? 01:15:08
24 A. Yes. 01:15:10
25 Q. So that to be more accurate, is it true that the 01:15:14

1 comparison should be youth prevention expenditures 01:15:18
2 through TI to total domestic tobacco sales? 01:15:22
3 A. I don't think so. Whether it's a youth prevention 01:15:24
4 expenditure by the company or youth prevention 01:15:26
5 expenditure through TI, it's still a youth 01:15:28
6 prevention expenditure. 01:15:30
7 And in terms of more accurate or less 01:15:32
8 accurate, it's based upon the information provided. 01:15:34
9 And this is accurate based upon the information 01:15:36
10 provided. 01:15:38
11 Q. But you agree, then, that if American Tobacco were 01:15:40
12 to provide the information as to how much they spent 01:15:42
13 as a company on youth prevention expenditures other 01:15:46
14 than through TI, you would then have to include it 01:15:50
15 and recalculate your ratios? 01:15:52
16 A. Had they provided such data, it would be included, 01:15:54
17 the ratios would be recalculated. And if they 01:15:58

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provide such data and we are asked to update our report, it will be included and the ratios will be recalculated. 01:16:02 01:16:04 01:16:06

Q. So then just as a general matter, you have not made any substantive cuts of information that's been provided to you, saying we are not going to include that in this analysis; you've taken all the information you have been given and where it's 01:16:10 01:16:14 01:16:16 01:16:24 01:16:26

specific to the company you've used that over industry-wide, but other than that, you've used all the information you have been given? 01:16:28 01:16:32 01:16:34

A. We have used all the information we have been given, we have made no cuts. All the information that's been provided has been reflected in this report. 01:16:40 01:16:42 01:16:44

Q. So that if, for instance, a defendant said in their interrogatory answer these are the six different things we spent on research and development, you would have included all six unless you had a substitute figure from somewhere else that you thought was better? 01:16:46 01:16:50 01:16:54 01:16:56 01:16:58 01:17:00

A. In fact, there have been responses where there was more than one input; and, yes, this report does reflect multiple inputs within one category. 01:17:06 01:17:10 01:17:12

Q. But I am trying to get at -- I understand it reflects, but did you reject any inputs as saying that's not appropriate to put in this report? 01:17:14 01:17:18 01:17:20

A. No. This report is -- whatever has been reported is reflected in this report. 01:17:26 01:17:26

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Q. All right. So then that explains how these colored lines work. 01:17:36 01:17:40

So then go back to the first page of American Tobacco. So starting in '54, which is tab 2A. 01:17:42 01:17:46 01:17:48

A. Yes. 01:17:48

Q. Okay. Let me just -- I'm sorry. Let me ask: Obviously, all of these years that you have got here in these colored lines start before 1954. Did you proportionally try to figure out the part that was outside of 1954 and not included, or did you just include all of the number? 01:17:54 01:17:58 01:18:02 01:18:06 01:18:08 01:18:10

A. We included the entire number for R&D for '54 on. So, in essence, to the extent that there were expenditures prior to '54, we have made no such allocation, we have assumed that they fall within the '54 to '94 period. 01:18:18 01:18:20 01:18:24 01:18:26 01:18:28

Q. So if American Tobacco says, for instance, with regard to the purple line, this was spent between 1943 and 1964, you're assuming for purposes of this analysis that it was all spent between 1954 and 1964? 01:18:32 01:18:34 01:18:38 01:18:42 01:18:42

A. Yes. 01:18:44

Q. All right. Then just looking at this, the research and development expenditures is footnote (m). 01:18:52 01:18:56

A. And you are still on American Tobacco? 01:18:58

Q. Yes. 01:19:00

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A. All right. 01:19:00
Q. And that indicates that you got that from 01:19:04
interrogatory answers addressed to the American 01:19:08

Tobacco Company, interrogatory number 18, and then 01:19:14
you list additional documents by Bates number. 01:19:18
And that's where all of the numbers that 01:19:22
we see reported in research and development 01:19:24
expenditures on that line would come from? 01:19:26
A. Yes. 01:19:26
Q. Looking then down on contributions to CTR, you make 01:19:36
a distinction between general fund and special 01:19:38
projects. Is that a distinction that CTR made in 01:19:42
its interrogatory answers? 01:19:44
A. Yes. 01:19:46
Q. And do you understand what that distinction means? 01:19:48
A. That some are to the general fund and some are to 01:19:54
special projects. 01:19:54
Q. Do you understand how that relates to research and 01:20:00
development? 01:20:00
A. Only that there were contributions to a general fund 01:20:02
and there were contributions to special projects. 01:20:04
Then it's part of the overall contributions; that's 01:20:06
it. 01:20:08
Q. And you assumed that both of them related to 01:20:08
research and development? 01:20:10
A. Yes. 01:20:10
Q. Okay. Then the next line is just a sum of all of 01:20:24
the numbers in each of the columns up until that 01:20:26

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point, is that correct, the research and development expenditures and contributions to CTR? 01:20:28 01:20:32

A. Yes, that is merely a summation year by year. 01:20:34

Q. Then the advertising, marketing, and promotion expenditures comes from, also, responses to interrogatories, at least looking at footnote (n)? 01:20:36 01:20:46 01:20:50

A. Yes. There is the caveat, though, in footnote (n) that we were not provided information for 1994 for American Tobacco and assumed that in 1994 they spent an amount at least equal to what was spent in 1993 and used that for 1994. 01:21:00 01:21:06 01:21:10 01:21:14 01:21:16

Q. Then if we go to the numerical summary page -- 01:21:32

A. For American Tobacco? 01:21:34

Q. For American Tobacco. All right. The first number, research and development expenditures, we get that from the annual summary of all of the items in the previous pages; is that correct? 01:21:52 01:22:04 01:22:08 01:22:10

A. Yes. In fact, that's shown on the immediately preceding page. 01:22:12 01:22:14

Q. And the same is true of the contributions to CTR? 01:22:20

A. Yes. 01:22:22

Q. The same appears to be true up through total youth prevention expenditures? 01:22:26 01:22:30

A. Yes. 01:22:32

Q. Then you have a number for total domestic tobacco 01:22:36

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sales. Where does that come from? 01:22:40

A. That would be consistent with the exhibit volume. 01:22:42

Q. The other -- 2011? 01:22:54

A. Yes. 01:23:02

Q. Okay. And that would be, just so we have got it, 01:23:08
page 5 of that tab. You are taking the domestic 01:23:12
tobacco revenue number? 01:23:14

A. Correct. 01:23:22

Q. All right. Then in terms of your expenditure 01:23:38
comparisons, each of those would be drawing on one 01:23:44
of the -- I guess two of the numbers above to come 01:23:46
up with the ratio? 01:23:48

A. Yes. 01:23:48

Q. Now, do you have any opinion in a qualitative manner 01:24:06
as to the nature of these ratios; are they high, 01:24:10
low, acceptable, good, bad? 01:24:14

A. My opinion is they are what is shown in this report. 01:24:20

Q. Simply the numerical calculation? 01:24:22

A. Yes. 01:24:22

Q. Do you have any opinions or have you done any 01:24:26
relative comparisons of the tobacco industry to 01:24:30
other industries with regard to these types of 01:24:34
ratios? 01:24:34

A. You are not speaking of the profitability? 01:24:36

Q. Not profitability, no. We are talking about 01:24:38

advertising, R&D, and youth prevention. 01:24:46

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A. The only analysis I have done is in this report, and there has been no comparison to other industries. 01:24:46 01:24:48

Q. So you do not intend to draw on -- back up. You mentioned earlier that in other assignments you have had for other clients you have come up with analyses of R&D as a percentage of sales? 01:24:52 01:24:54 01:24:58 01:25:02

A. From time to time, yes. 01:25:02

Q. You do not intend to draw on whatever conclusions you came up with in those assignments and compare that to the tobacco industry? 01:25:08 01:25:10 01:25:12

A. No. 01:25:14

Q. Are you aware in the complaint that the defendants have been charged with a conspiracy to delay the introduction of a safer cigarette? 01:25:32 01:25:40 01:25:44

A. It's been a long time since I have read the complaint. I can't answer that question as I sit here; I would have to re-read the complaint. 01:25:50 01:25:52 01:25:54

Q. As far as you know, do you intend to offer any opinions on that subject? 01:25:56 01:26:00

A. The subject of? 01:26:02

Q. Conspiracy to develop -- not to develop a safer cigarette. 01:26:06 01:26:06

A. I do not expect to offer any opinions in that area. 01:26:10

Q. And we are using this as an example, but wherever 01:26:24

you have broken down the time periods into something other than 1954 to '94 or '96, you have done that because of the way in which the data was given to 01:26:26 01:26:32 01:26:36

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you? 01:26:36

A. That is correct. And that's actually reflected in the footnotes as well. The very last footnote identifies that, (v): "Comparisons are made only for the years for which information has been made available." 01:26:38 01:26:42 01:26:44 01:26:48 01:26:48

Q. And otherwise these years have no significance to you? 01:26:52 01:26:52

A. I'm sorry. When you say -- 01:26:58

Q. There is no act that a defendant did in a particular year that you are tying this to; you are just tying this to what dates you have information for? 01:27:00 01:27:02 01:27:04

A. The only act is that they provided information. 01:27:08

Q. But you don't know of any other act that's alleged in the complaint, or whatever, that these dates relate to? 01:27:10 01:27:14 01:27:14

A. These dates are only related to the years in which information was provided and nothing else. 01:27:18 01:27:20

Q. And as far as you know, the only significance of 1954 is that that's the date that the plaintiffs asked you to start doing these comparisons? 01:27:26 01:27:30 01:27:32

A. All of my analysis starts in 1954, yes. 01:27:36

Q. And you have no independent conclusion as to what would be an appropriate starting date? 01:27:40 01:27:42

A. It's based purely on a request that everything begin as of 1954. 01:27:48 01:27:50

Q. Was there anything that the plaintiffs asked you to do that you told them you thought was inappropriate 01:27:58 01:28:00

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or you would do it differently? 01:28:02

A. Your question is difficult because I think it makes an assumption that is incorrect. The plaintiffs asked me to do an analysis. How I did that analysis was up to me and I decided how to approach this analysis; and there was never, never any suggestion or request to do it differently in any way. So the point is that -- your question makes an assumption that is, I think, incorrect. 01:28:14 01:28:16 01:28:24 01:28:30 01:28:42 01:28:50 01:28:52 01:28:54

Q. Let's look at that for a minute, then. They did ask you to make specific comparisons? 01:28:58 01:29:00

A. Oh. You are talking about the R&D only? 01:29:02

Q. Or youth prevention expenditures or whatever. 01:29:04

A. That's what I mean. You are referring to -- you are not talking about my profitability analysis? 01:29:08 01:29:10

Q. No. We are focusing in on this report. 01:29:12

A. I'm sorry, I misunderstood. 01:29:14

Q. With regard to the things you were asked to look at, is there anything that you said to -- I don't think 01:29:16 01:29:18

you should look at it this way, I think you should be comparing two other numbers? 01:29:22 01:29:24

A. No. 01:29:24

Q. Do you recall any discussion of that? 01:29:28

A. I recall there was no such discussion like that. 01:29:30

Q. Do you have any basis for concluding that any of these particular ratios should be the same, as you look at all six defendants? 01:30:10 01:30:14 01:30:24

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MR. MANNING: Objection, vague, lacks foundation. 01:30:28

A. The basis for my comparison is the information provided; that's it. 01:30:34

Q. Well, do you plan to give an opinion that -- do you plan to characterize in any way the differences between the defendants' ratios? 01:30:46

A. "Characterize" is a word that requires explanation. If I am asked the difference between, let's say, American Tobacco and Brown & Williamson, for example, on advertising, marketing, and promotion expenditures to total domestic tobacco sales, from the information provided Brown & Williamson was 15.2 percent and American Tobacco was 8.6 percent; that's a characterization of the difference. 01:31:08

Q. Do you plan to put any other -- do you plan to put a qualitative description on that difference? 01:31:40

A. No. 01:31:44

Q. Do you have any opinion as to whether one level or another is more appropriate? 01:31:50

A. No. 01:31:54

Q. Do you have any opinion as to whether the absolute dollars that are spent in any of these categories are at an appropriate level or not? 01:32:06

A. No. 01:32:20

Q. Do you have any plans to put a qualitative description on the levels of absolute dollars in any of these categories? 01:32:26

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A. No. 01:32:32
Q. Let's just keep flipping through the -- I guess if we go to tab C in this section, this will now be American Tobacco. And I take it, actually, if we keep the numerical summary page up, that basically there is one graph for each of these ratios? It's the last page in tab A. 01:32:54 01:32:58 01:33:04 01:33:08 01:33:20 01:33:22
A. I understand. The answer is yes. 01:33:24
Q. So there shouldn't be anything in a graphical presentation that isn't already on the numerical summary page? 01:33:28 01:33:32 01:33:32
A. Correct. 01:33:38
MR. ATKESON: If we could take a five- or ten-minute break and then -- we can go off the record. 01:33:58 01:34:00 01:34:00

(Break taken.) 01:41:42
BY MR. ATKESON:
Q. Do you know if your reports have been provided to any other experts in this case? 01:41:54 01:41:56
A. I don't know if they have. 01:42:08
Q. Have you had discussions with any other experts in this case? 01:42:10 01:42:10
A. I have not. 01:42:12
Q. Are the only people you have talked to relative to this case, other than today, lawyers at the Robins firm? 01:42:16 01:42:20 01:42:20
A. And my own staff. 01:42:38

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Q. And are they all housed in the same office you are? 01:42:44
A. Yes. 01:42:46
Q. Now, in terms of the way these reports were done, 01:42:52
you say that the calculations and the like were done 01:42:54
on the computer; is that correct? 01:42:56
A. Yes. 01:42:58
Q. Were the pages in this report just printed off of 01:43:04
the computer? 01:43:04
A. In which report? 01:43:06
Q. Any of them. 01:43:08
A. For example, if we go to the profitability analysis, 01:43:16
you will see that there's -- the pagination goes 01:43:24

right through the computer, it's paginated by the 01:43:28
computer. So if you see pagination like that, it 01:43:30
would be computerized. 01:43:32
Q. The R&D report does not have pagination. 01:43:40
A. Correct. 01:43:42
Q. So that -- I am focusing now primarily on the 01:43:48
tables. 01:43:50
A. In the R&D report? 01:43:52
Q. Right. 01:43:54
A. Okay. 01:43:54
Q. Were these numbers somehow transcribed from a 01:43:58
computer spreadsheet and then typed out, or were 01:44:00
these printed off of the computer as well? 01:44:04
A. Oh, these were printed off the computer as well. 01:44:06
Q. And all the calculations were done by the computer? 01:44:08
A. Once input, yes. 01:44:12

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Q. How is it that you ended up with typos, then, in the exhibit volume? Where you had, for instance, the 20.1 changing to 21.0, how did you figure out that that had even occurred? 01:44:14 01:44:18 01:44:22 01:44:24

A. Let's go to that example. 01:44:26

MR. MANNING: That's in?

MR. ATKESON: 2011. 01:44:36

A. And then go to American Tobacco, which is 1A, page 4. 01:44:42 01:44:42

Q. Okay. 01:44:44

A. And the 20.1, which is in the lower right-hand corner of the box, that actually is a cell which copies directly from the cell above, the 20.1; that's why it's 20.1. 01:44:48 01:44:54 01:45:00 01:45:02

But, in fact, the way the profit margin calculation is done, it is taking not the 20.1 percent, but taking year by year the dollar earnings from operations divided by the revenue and computerized -- carrying it over into the Minnesota profitability analysis, and there you will see 21.0. 01:45:04 01:45:10 01:45:16 01:45:20 01:45:24 01:45:30 01:45:32

So one is merely copying, the other is calculating. And it's all computerized. 01:45:32 01:45:34

Q. Let's just focus on that number. What that 21.0 is is a cumulative weighted average of the assumed operating margin all the way through? 01:45:38 01:45:42 01:45:46

A. No. The 21 percent is a product which results from 01:45:56

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going year by year operating profit divided by revenues year by year by year. And then the result or the midterm result of that is dividing -- excuse me, multiplying that towards manufacturer sales and you end up with that operating profit. 01:46:02 01:46:08 01:46:14 01:46:22 01:46:24

Q. Well, let's just look at American Tobacco. As we go on pages 1, 2, 3, and 4, you have for every year an 01:46:30 01:46:34

assumed operating margin? 01:46:36

A. Correct. 01:46:38

Q. Then you have this cumulative assumed operating margin? 01:46:42 01:46:42

A. Correct. 01:46:44

Q. How did you -- did you just add up all the annual assumed operating margins and take the average, or how did you -- 01:46:46 01:46:50 01:46:52

A. We are not averaging percentages. We are actually doing it on the dollars. 01:46:54 01:46:56

Q. So that the 21 percent is -- 01:47:02

A. What page are you on? 01:47:04

Q. Page 4, the number that is corrected. 01:47:08

A. Oh, excuse me. I thought you said -- you mean 20.1 percent as opposed to 21.0 percent? You said 21 percent. 01:47:10 01:47:14 01:47:14

Q. Well, 21 percent is the correct number now, right? 01:47:18

A. Correct. 01:47:18

Q. So basically you are saying that 146,777,000 is 21 percent of 697,441,000? 01:47:24 01:47:28

A. Correct. 01:47:28

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Q. At what point in the process did you figure out that the calculation to be performed in this cell had been entered incorrectly? 01:47:32 01:47:34 01:47:36

A. Actually, the cell had been entered correctly; this 01:47:38

cell merely tracks from the cell above. But the calculation itself is correct, so the calculation is correct. All this does is follow on from the cell above. 01:47:42 01:47:46 01:47:50 01:47:50

That's an actual result, because you are missing two years. It's the same thing with Brown & Williamson, because you are missing the earlier years. So one merely repeats the other. 01:47:54 01:47:58 01:48:00 01:48:02

Q. I apologize, I'm lost. What I am trying to figure out is: How is it that you had this problem with this cell only with regard to this company and not with the others? 01:48:08 01:48:12 01:48:14 01:48:16

A. I think I just explained that. I will do it again. 01:48:20

Q. Somehow I missed what makes American Tobacco different than, say, Philip Morris. 01:48:22 01:48:24

A. Okay. On page 4, this merely -- the bottom assumed operating margin at 20.1 percent all the way across merely copies a cell from above, it is not the basis for a calculation. 01:48:50 01:48:54 01:48:58 01:48:58

The calculation is driven off of the actual dollars of operating profit relative to revenue year by year by year, and that was the basis for the calculation in the Minnesota tobacco 01:49:02 01:49:08 01:49:14 01:49:18

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profitability analysis. 01:49:22

So all we are doing is copying one cell 01:49:26

from another in the earlier part of the analysis, 01:49:30
but when we get to Minnesota tobacco we are actually 01:49:32
using the raw data to calculate; that's the answer. 01:49:36
Q. And so you are also saying that the numbers should 01:49:46
not -- the percentage down at the bottom should not 01:49:50
necessarily be the same for domestic tobacco as it 01:49:54
is for Minnesota tobacco? 01:49:54
A. It should year by year, but the end result at the 01:49:58
end of time it may not. 01:50:00
Q. It might not be? 01:50:02
A. Because of the scale issue. 01:50:02
Q. How did you figure out that this cell was incorrect? 01:50:06
A. Oh. 01:50:14
Q. I mean, did you hand check each of these numbers and 01:50:16
go, wait a minute, that's 21 percent, not 01:50:18
20.1 percent? 01:50:20
A. All you have to do -- 01:50:20
Q. What flagged you in to that? 01:50:22
A. Basically in terms of going year by year you will 01:50:28
see each and every number tracks, but when you get 01:50:30
to the summary year -- here is where, I'm sorry, you 01:50:34
may be getting confused, is that if you take a -- if 01:50:42
you go year by year as opposed to summing across, 01:50:44
you can actually end up with a different result 01:50:46
mathematically. 01:50:50

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1	Q.	No, I understand all that. I am just saying at one	01:50:52
2		point when you produced this to us you were happy to	01:50:56
3		write down 20.1 percent. Something happened that	01:51:00
4		made you go, wait a minute, that's not 20.1 percent,	01:51:02
5		that's 21 percent. What is it that occurred that	01:51:06
6		made you figure out you had a mistake here or a	01:51:08
7		typo?	01:51:10
8	A.	Oh. The typo?	01:51:10
9	Q.	Yes.	
10	A.	Basically all you have to do is look at the 20.1 on	01:51:14
11		page 4 relative to tab 4A, page 4, and you will see	01:51:36
12		on line 30 for the column '54 to '96 is	01:51:40
13		21.0 percent. The 21.0 percent on page 4 -- tab 4A,	01:51:48
14		page 4, is correct.	01:51:50
15	Q.	And who checked these numbers?	01:51:52
16	A.	I did.	01:51:52
17	Q.	And did you check all of the numbers back and forth	01:51:56
18		between the tables?	01:51:58
19	A.	At one point or another, yes.	01:51:58
20	Q.	So it was when you checked this number that you said	01:52:02
21		we have to change this typo here?	01:52:04
22	A.	Yes.	01:52:06
23	Q.	Do you know how much you have billed the plaintiffs	01:52:10
24		to date for your work?	01:52:12
25	A.	I don't know an exact number.	01:52:20

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Q. Can you give me a ballpark? 01:52:22
A. Something in excess of $100,000. 01:52:22
Q. And do you know if that includes the work you did on 01:52:28
the amended report? The reason I ask is because you 01:52:36
just finished that two weeks ago or so. 01:52:38
A. The answer is yes. 01:52:40
Q. It does? 01:52:40
A. Yes. 01:52:40
Q. And I assume that that is a billing by Houlihan 01:52:52
Lokey and not just billings for your time, but that 01:52:54
would include the three assistants and the other 01:52:56
people you talked about? 01:52:58
A. Yes. 01:52:58
Q. And somewhere over 100,000 means less than 200,000? 01:53:04
A. Yes. 01:53:04
Q. Okay. And at this point you don't have any 01:53:10
intention to do more work; plaintiffs haven't asked 01:53:14
you to do any more work at this point? 01:53:18
A. No. 01:53:18
Q. Were you able over the lunch to figure out where 01:53:26
that '80 to '89 number came from for Brown & 01:53:30
Williamson? 01:53:30
A. Yes. 01:53:32
Q. And where is it? 01:53:32
A. If we -- let's turn to the chart on page 39 of the 01:53:48

profitability analysis and page 5 on tab -- 01:54:08
Q. For Brown & Williamson? 01:54:10

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A. Brown & Williamson, tab B, page 5. And you will see for '80 to '89 that consolidated group, going across, 218,999; and above it 105,031. The green is something in excess of 300. Going back to page 39 at the point that you asked me about. 01:54:18 01:54:22 01:54:34 01:54:40 01:54:42

Q. Yes. 01:54:44

A. That actually is a result of adding 218,999 plus 105,031 instead of subtracting one from the other. 01:54:48 01:54:54

Q. So that in the way these numbers are reported, the BAT global tobacco and the consolidated group are two separate figures and not one subsumed within the other? 01:54:56 01:55:00 01:55:04 01:55:04

A. Let me clarify. What we should have done is subtracted one from the other rather than add the two together. This chart on page 39 should be changed. 01:55:10 01:55:12 01:55:14 01:55:14

Q. Oh, okay. The numbers are right in here? 01:55:18

A. Correct, the numbers are right. The graphical illustration needs to be changed. 01:55:20 01:55:24

Q. And so the same would be true, then, for the operating profits on that chart as well? 01:55:26 01:55:28

A. Yes. 01:55:30

Q. Other than being able to describe the numerical 01:55:58

results you came up with as a result of your analysis or the ratios that you calculated, do you have any present intention of developing a further interpretation of these numbers in any manner? 01:56:00 01:56:08 01:56:14 01:56:18

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A. Not beyond what is set forth in my reports, no. 01:56:30

MR. ATKESON: I have no further 01:56:30

questions. 01:56:38

MR. MANNING: We will read and sign the 01:56:42

deposition. 01:56:42

DEPOSITION CORRECTION SHEET

CASE TITLE: MINNESOTA TOBACCO LITIGATION

WITNESS: PAUL MUCH

DATE TAKEN: JULY 18, 1997

PAGE	LINE	DESIRED CHANGE & REASON FOR CHANGE
____	____	_____
____	____	_____

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PAUL MUCH

DATED:

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Lori A. Case, Court Reporter
12 South Sixth Street, Suite 620
Minneapolis, Minnesota 55402

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Be it known that I took the deposition of PAUL MUCH on July 18, 1997 at the law office of Robins, Kaplan, Miller & Ciresi, 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota;

That I was then and there a notary public in and for the County of Ramsey, State of Minnesota, and that I was duly authorized to administer an oath;

That the witness before testifying was first duly sworn to testify the truth and nothing but the truth;

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That the deposition was stenographically reported by myself and reduced into print through computer-aided transcript, and that it is a true record to the best of my ability;

That I am not related to any of the parties hereto, nor interested in the outcome of the action;

That the cost of the original transcript has been charged to the party noticing the deposition, unless otherwise agreed by counsel, and that copies have been made available to all parties at the same cost, unless otherwise agreed upon by counsel;

That the reading and signing of the deposition by the witness was not waived.

WITNESS MY HAND AND SEAL this 10th day of August, 1997.

LORI A. CASE, RPR
Notary Public

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